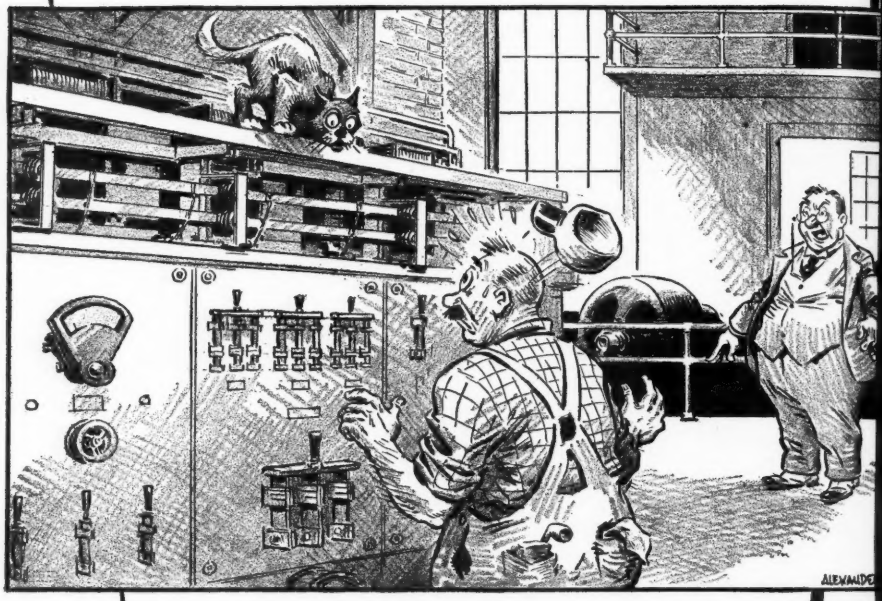
Public Utilities

FORTNIGHTLY

January 7, 1943

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

"FROM HAPPENINGS LIKE THIS"...



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Public Utilities Fortnightly

VOLUME XXXI *January 7, 1943* NUMBER 1

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

Advertising Section

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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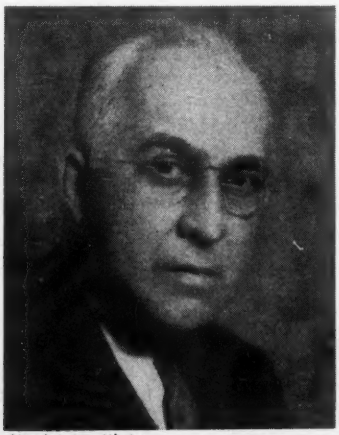
Pages with the Editors

As if the war effort were not enough trouble, the most hurried glance into the New Year would seem to assure us of an oversubscribed quota of administrative and regulatory problems affecting utilities. Some of these issues may turn out to be quite interesting to one with an analytical turn of mind. But interesting or not, they will all have to be solved one way or the other in 1943.

In the opening article in this issue Francis X. Welch, of our editorial staff, goes into his annual act of putting on the prophet's cap, polishing the dust off his crystal ball, and telling us what the New Year has in store for the utilities from the viewpoint of the nation's capital. A more conservative Congress, a more discreet administration, more difficult operating conditions, more taxes, less man power, and less materials—they are in general the fleeting items which Mr. Welch sees in his crystal ball. On the whole, and relatively speaking, he arrives at a somewhat enigmatic conclusion that things might be a great deal worse for the utilities.

One interesting problem which has already been solved is the question of whether the War Labor Board has authority to intervene in disputes between city officials and employees of municipally operated utilities. The very fact that WLB conducted hearings in petitions of various city employees and rebuked Mayor LaGuardia of New York city for refusing to send representatives to Washington to participate in a hearing involving subway employees indicated that the WLB still has ideas of its functions quite different from those of the United States Conference of Mayors.



Allied News Photo

ERNEST R. ABRAMS

SEC can harmonize its program with the war without scrapping it.

(See Page 23)

Specifically, the WLB ruled on December 15th that it had no authority over labor union disputes involving three municipal utility functions: garbage collectors in Newark, New Jersey, subway employees in New York city, and utility workers in Omaha, Nebraska. Inasmuch as the last-named case involved a utility district organized independently of the municipal corporation, the WLB ruling probably extends to all such independent public organizations set up for utility operations, as well as direct city or state control.

This probably does not extend to quasi public groups, such as rural electrification cooperatives and others not wholly owned and controlled by an established political subdivision. It also leaves unanswered the question of whether WLB, upon orders of the Office of Economic Stabilization, should continue to control wage levels of such municipal utility employees. It is understood OES ostensibly still exercises such authority under an executive order of the President.

It goes without saying, of course, that private utilities are subject to WLB jurisdiction. But in the case of municipal plants there seems to be some reasonable basis for making a distinction between public ownership employees and private utility employees. In the latter case the President is entitled to enforce WLB decrees for seizing and operating the property of a recalcitrant utility. That actually happened in the case of a middle western railroad. But suppose New York city refused to obey WLB. Can we imagine the President seizing and operating New York city, turning Mayor LaGuardia out of city hall, confiscating the city's taxes and other revenues, and conducting functions performed by elected officials such as the district attorney? The WLB

ruling above noted perhaps removes the possibility of such a sensational showdown. But it does point up the argument that when we start to mix government and proprietary functions there are bound to be legal and political complications.

As *The Washington Post* recently stated editorially, the controlling factor in cases of this sort has been made clear by President Roosevelt. The *Post* said:

> "There can be no genuine collective bargaining between governments and their employees, he has said in effect, because those employees have no right to strike. Their relationship to their employer is governed by law, and law cannot be changed at the behest of public servants threatening to hold up the processes of government until their demands are met. Of course, organized public employees may petition officials for the elimination of grievances, for higher wages, or for better working conditions. If their pleas go unheeded, the employees may resign or appeal to the public to elect more sympathetic officials at the next election. But no right to strike on their part can be recognized without jeopardizing the legal basis on which government rests."

❦

How much better would be a more coöperative approach in settling all our problems between labor and utility management whether under public or private auspices. In this issue (beginning page 15) ALFRED M. COOPER gives us the benefit of his ideas on working out a formula for industrial peace in the utility field. MR. COOPER, who has had considerable experience in supervising utility personnel under both publicly and privately owned organizations, is at present a resident of Banning, California. Formerly a teacher in Kansas City public schools and the University of California, MR. COOPER spent a full score of years supervising employee training for various utilities and other industries. He is the author of several volumes on this important subject.

❦

RECENTLY there appeared in *The Wall Street Journal* an article which described rather gloomily the impact of the war on the Securities and Exchange Commission. The commission was represented as being drained of its vital man power, demoralized in spirit, overloaded with a top-heavy schedule of work to be done under its holding company program, and somewhat upset by its exile to Philadelphia for the duration. This may well have been an overpessimistic slant. But there is a feeling in some quarters (notably New York city) that if the SEC has any trouble administering its regulatory policies, they are self-made, and could be lightened by the simple procedure of adopting a more practical approach in view of the emergency conditions.

ALFRED M. COOPER

Labor partnership is preferable to government dictatorship in industrial relations.

(SEE PAGE 15)

EDITORIALLY, of course, we do not hold any brief for either the view that the SEC has been too strict or that it is merely doing its duty and should continue to do so. In this issue, however, we present a discussion by a veteran financial writer, which contains his personal views as to how the SEC might conform to the expedience of the war emergency in its administration of the Holding Company Act.

THE author of this article (beginning page 23), ERNEST R. ABRAMS, needs no introduction to regular readers of this department. A resident of New York city, MR. ABRAMS is a frequent contributor to business and financial papers on matters affecting utility economics and regulation.

❦

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

The amendment of October 2nd to the Emergency Price Control Act of 1942, directed at the freezing of utility rates, is a new and important factor in all rate proceedings. One of the first cases dealing with this subject is that of the Washington Gas Light Company, which came before the District of Columbia commission. The commission's decision and the views expressed by the majority commissioners and the dissenting commissioner appear in this issue. (See pages 1, 45, 50.)

THE next number of this magazine will be out January 21st.

The Editors

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 1–64, from 46 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

GEORGE MARSHALL
Chief of U. S. Army Staff.

"Our enemies are desperate and implacable. Our task is extremely difficult."

RAYMOND MOLEY
Associate editor, Newsweek.

"An election is a sort of little war, and many vote merely to participate in a contest."

EDITORIAL STATEMENT
The New York Times.

"The right to strike is a right to be preserved in peace time. It is a costly right to insist on now."

EDITORIAL STATEMENT
The Wall Street Journal.

"The way to control prices is to control them—all of them. Subsidies can but partly conceal their rise."

DAVID GINSBURG
General counsel, Office of Price Administration.

"We spent about $250,000,000 in 1941 for electrical household gadgets. Next year $5,000,000 will buy the entire output of such things."

WALTER P. ARMSTRONG
Former president, American Bar Association.

"The war cannot be won if the people in their minds place any limitation upon the time we must devote to or the price we must pay for victory."

EDITORIAL STATEMENT
Electrical World.

"If different races and creeds can live together with tolerance, why can't public and private ownership work together without constantly being at each other's throats?"

W. J. DONALD
Managing director, National Electrical Manufacturers Association.

"The war production program asks American industry in general, and electrical manufacturers in particular, to do the impossible—and they are doing it to an amazing degree."

WILLIAM GREEN
President, American Federation of Labor.

"In my opinion, the most constructive step organized labor can make at this time toward the success of the nation's war effort is the reëstablishment of real, organic unity within the ranks of labor."

DANIEL W. BELL
Under Secretary of the Treasury.

"We do not delude ourselves that the financing of a total war can be merely a money market operation. Total war requires total effort and total sacrifice, and the financial front can be no exception."

R. N. PFAFF
District manager, Southern Bell Telephone & Telegraph Company.

"Don't make that long-distance telephone call unless it's absolutely essential—or Uncle Sam is going to crack down."

ALFRED M. LANDON
Former governor of Kansas.

"The President is a tough guy only when it comes to feeding us sugar. We are fighting the war with a papa-love-mama administration."

WILLIAM M. JEFFERS
Rubber Director.

"Every means of transportation in this country, expanded so skilfully through the past years, especially the bus and truck, must be continued to its fullest to completely accomplish the necessities of our essential business life on rubber."

LEON HENDERSON
Chief, Office of Price Administration.

"I ought to confess that I'm a great believer in competition. But I get to wondering whether the war-time controls are going to be abandoned. I have a sort of nostalgia for competition. After all, the government has spent $100,000,000 on my education."

JOSEPH B. EASTMAN
Director, Office of Defense Transportation.

"We do not know how long this war will last, but it promises to be a long and bitter struggle. Transportation must be ready for all the unforeseen contingencies and emergencies which are likely to arise, and with some of which we have already had grievous experience."

EUGENE B. CASEY
Special executive assistant to the President.

". . . today we are acutely aware that in a world dominated by the airplane, the radio, and the motor car, freedom cannot live in isolated islands of democracy surrounded by turbulent waters of despotism. We know that democracy and freedom cannot merely be enjoyed; that they must be defended and made so strong they are unassailable."

CARL W. ACKERMAN
Dean, Columbia University.

"If those who are determined to freeze the press succeed in achieving their objective we may have freedom of speech but be deprived of freedom to speak because the facilities and instrumentalities of communication will be frozen for the duration and only those governmental officials and agencies beyond censorship control will be able to use them."

FREDERIC A. DELANO
Chairman, National Resources Planning Board.

"It is quite within reason that new cities, at present unknown, will grow up in the next twenty-five years, because they offer what our present cities do not offer, or because they do a better job at a more moderate cost. . . . City planning is still in the *repair stage.* No one has ventured to plan a modern city from the ground up—although when we build a World's Fair and tear it down after a year or so, we give rein to our imagination and really do something."

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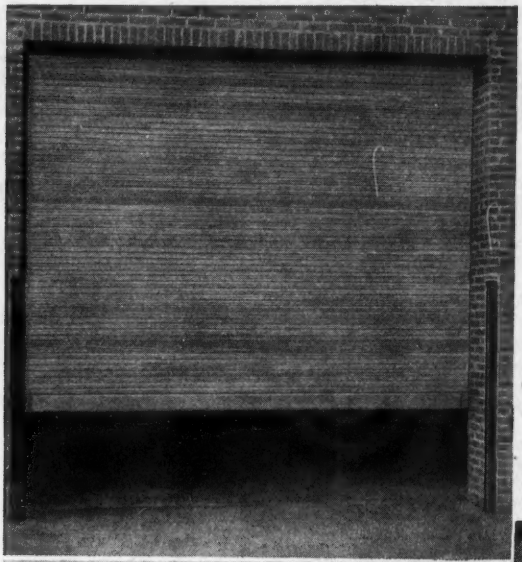

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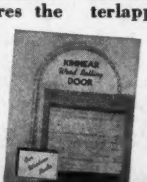

Motor operation is also available, and one or more remote control stations can be located at strategic points to further facilitate traffic control.

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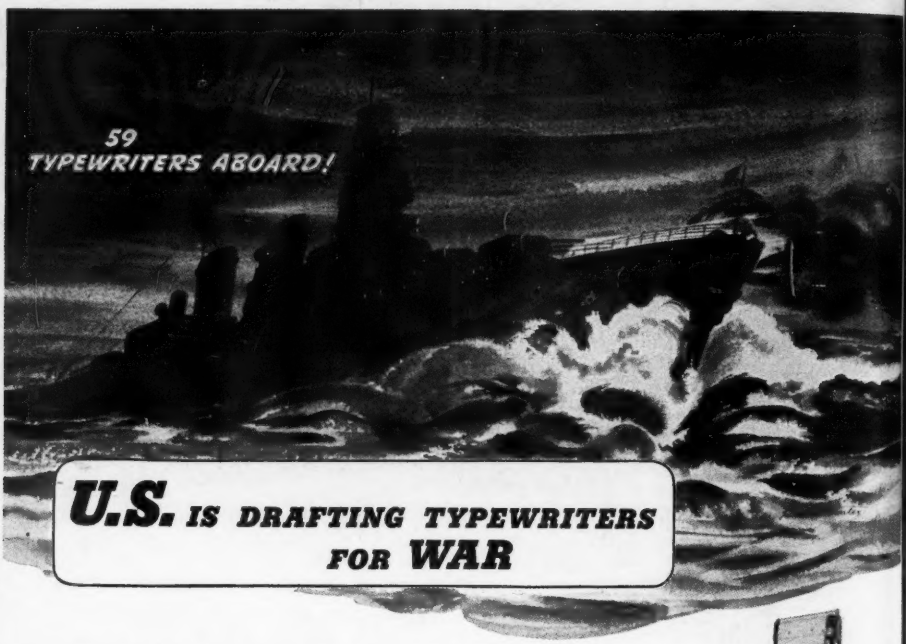

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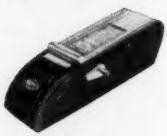

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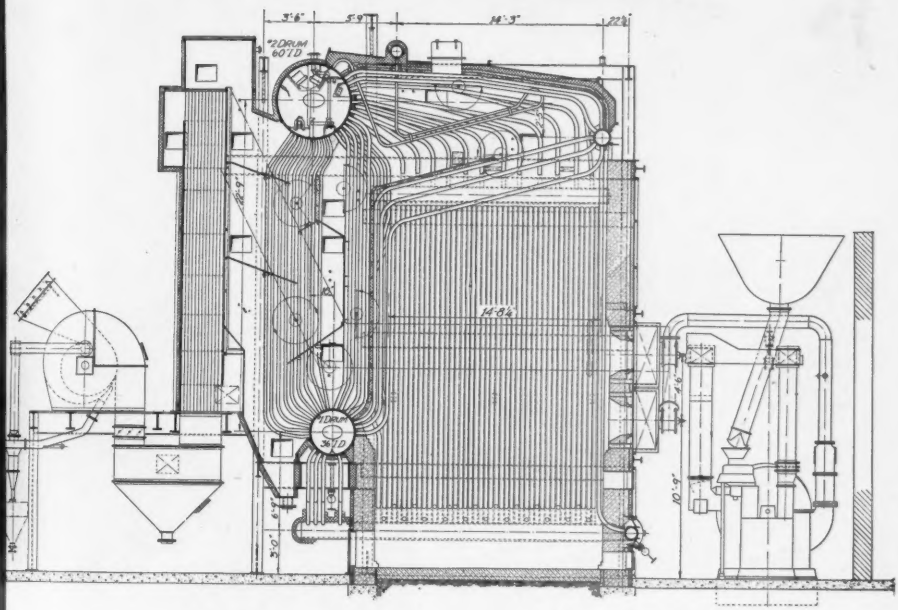

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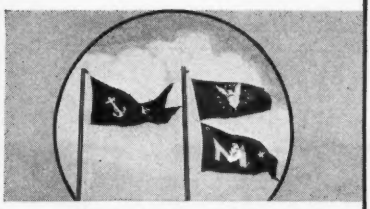
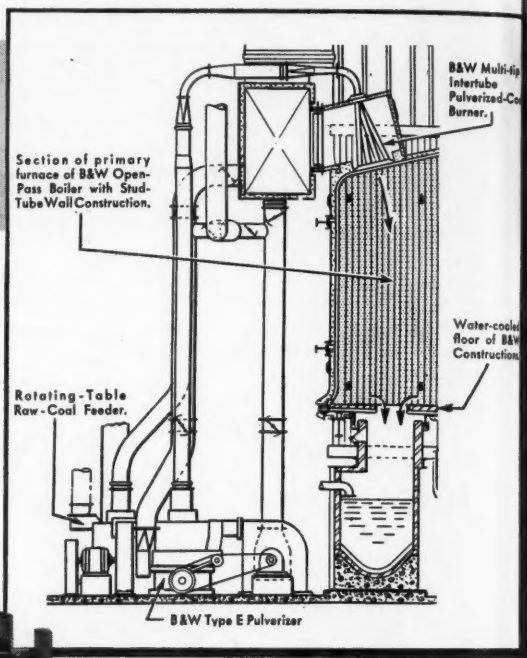


The Maritime Victory flag and "M" burgee now float proudly alongside the Navy "E" at the Barberton Works. Each is an award for "outstanding achievement" and is "an honor not lightly bestowed".



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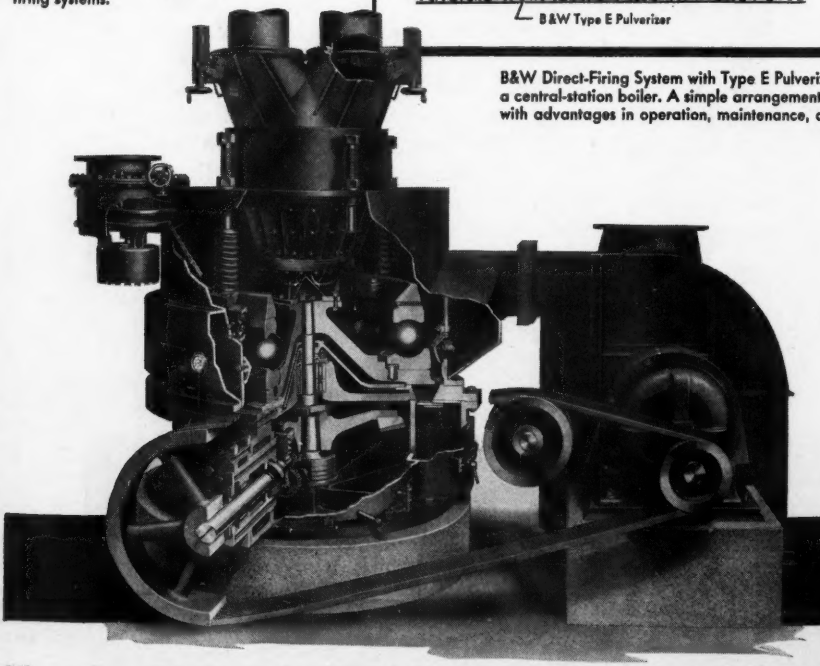
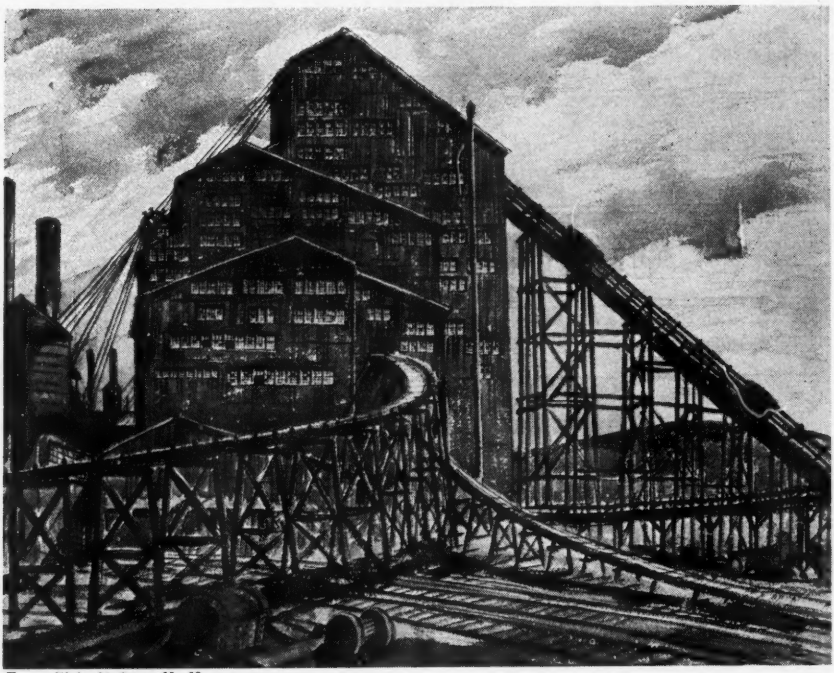


Utilities Almanack

Due to war-time travel restrictions, conventions listed are subject to cancellation.

JANUARY

7	Th	¶ *New York State Sewage Works Association will hold meeting, New York, N. Y., 1943.*
8	F	¶ *Colorado Society of Engineers opens meeting, Denver, Colo., 1943.*
9	Sa	¶ *American Institute of Electrical Engineers will hold winter convention, New York, N. Y., Jan. 25–29, 1943.*
10	S	¶ *Texas Water Works Short School will be held, College Station, Tex., Feb., 1943.*
11	M	¶ *Society of Automotive Engineers opens war production-engineering meeting, Detroit, Mich., 1943.*
12	Tu	¶ *Pennsylvania State Association of Boroughs will hold meeting, Harrisburg, Pa., Feb., 1943.*
13	W	¶ *Missouri Valley Association starts engineering conference, Kansas City, Mo., 1943.* ¶ *American Management Association begins marketing conference, Chicago, Ill., 1943.*
14	Th	¶ *American Management Association will hold personnel conference, Chicago, Ill., Feb. 10–12, 1943.*
15	F	¶ *Association of Highway Officials of North Atlantic States will hold highway problem conference, New York, N. Y., Feb. 17–19, 1943.*
16	Sa	¶ *American Gas Association Industrial and Commercial Gas Conference will be held, Detroit, Mich., Mar. 11, 12, 1943.*
17	S	¶ *American Water Works Association, Canadian Section, will hold meeting, Hamilton, Ont., Canada, Apr. 7–9, 1943.*
18	M	¶ *Illinois Telephone Association will hold annual business meeting, Chicago, Ill., Apr. 20, 21, 1943.*
19	Tu	¶ *United States Independent Telephone Association will hold executives' spring conference, Chicago, Ill., Apr. 22, 23, 1943.*
20	W	¶ *American Society of Civil Engineers opens meeting, New York, N. Y., 1943.*



From Elsie Hafner, N. Y.

"Mine Breaker"

By Gurdon Howe

Public Utilities

FORTNIGHTLY

VOL. XXXI; No. 1 JANUARY 7, 1943

Washington Utility Outlook For 1943

An analysis of possible consequences of the war impact on various utility industries in the light of present trends and circumstances.

BY FRANCIS X. WELCH

EX-REPRESENTATIVE Luther Patrick of Alabama, distinguished for his wit as well as common sense, has a novel explanation for the recent poor showing of the Democrats at the polls. Because he liked to tease his Republican colleagues, Patrick compared their election success to that of a profligate old darky in his native state. Rastus, it seems, was suddenly elected deacon of his colored church to the surprise of everyone, including his boss.

"Why, Rastus," demanded his mystified employer, "you drink lots of gin, you roll dice, and run around with the girls. How the deuce did you ever become a church officer?"

"Well, you see, boss," said Rastus grinning, "they wuz a disreputable element in dat congregation dat jes' riz up and demanded some mo' representation!"

Disreputable or otherwise, that element of American voters which "riz up and demanded some mo' representation" at the election last November is going to have an important bearing on Federal legislative and administrative policies affecting the business community during the year 1943. Other articles appearing in this magazine

have analyzed the composition of the new Congress sufficiently to permit the following three generalizations on its anticipated conduct:

1. Congress will be more critical of labor—the farm bloc tending to unite with conservative elements, as contrasted with the labor-farm alignment heretofore.

2. Congress will be critical of new administrative reforms and skeptical of old ones; but the disposition to repeal outstanding reform legislation is not believed strong enough to be "veto proof."

3. Exceptional losses in the congressional antiutility bloc at the recent election will tend to relieve these industries to some extent from the burdensome pressure of hostile legislative discrimination, and this may be reflected slightly even in the administration's activity.

THESE are, of course, broad statements and necessarily vague. In terms of specific action, they suggest that several interesting things may happen to the utilities during the year 1943. Take that first statement, for example—about labor going on the defensive. This does not necessarily mean that there will be legislative action, repealing the wage-hour law, or any of the feather bed aspects of the National Labor Relations Act. Here, again, the new farm-conservative coalition of Congress is not strong enough to override a veto that would certainly come from the presidential pen if such legislation passed the Congress.

But formal legislative action may not be necessary. The same results can be obtained by administrative action if the administration takes the hint. The effect of rising criticism of labor abuses and strikes affecting war production will be that Congress will certainly give the administration broad hints. Some of these hints will be taken, rather than risk open revolt by a runaway Congress.

By pursuing the same line of reasoning, we can expect that another bill will be introduced in the new session similar to the Paddock bill in the last session of Congress. That was the bill which would have virtually "frozen" the administration of the "death sentence" provision of the Holding Company Act by the Securities and Exchange Commission for the duration. The Paddock bill did not pass at the last session and its successor probably will not pass at the current session. But it will be more favorably received because of the changed complexion of the congressional committees. The net result will be, therefore, that the SEC will get a broad hint to stop rocking the boat during the storm, with drastic integration orders against utilities.

AND there is another potent reason why the SEC is likely to take note of such a hint. It is the Appropriations Committee. If the SEC does not slow down, Congress is liable to hit it where it is likely to hurt the most—in the pocketbook. The SEC has suffered considerably anyhow from drains on its staff by military induction and the assignment of its abler men to more important war work. Its exile to Philadelphia is evidence that it is not regarded as a very important war agency. This leaves the commission functioning in a sort of vacuum which gives the onlooker an impression of washing windows while the house is burning down.

In this somewhat demoralized con-

dition a serious blow at its appropriation might cripple the SEC as an effective regulatory agency. And this would be unfortunate indeed in view of much of the admittedly fine work it has accomplished in promulgating financial reforms. Hence, this observer is constrained to predict that the SEC, which still has some pretty alert officers on the bridge, will trim its sails a bit, voluntarily, and sail a more leisurely course until the shooting is over.

Let us take a look at some of these committees in Congress which are responsible for legislation affecting utilities. They are the Appropriations committees in both houses, already mentioned; also, there are the House Ways and Means Committee and the Senate Finance Committee which handle tax bills. Finally, and more directly affecting utilities, there are the Interstate Commerce committees of both houses which handle regulatory legislation.

It is not kown at this writing who the new members of these committees will be. But a mere reference to the shift in power would indicate that they will be more disposed to consider the problems and grievances of the utility industry than past congressional committees have been in recent years. In the Senate the Appropriations Committee in the last session was composed of seventeen Democrats and seven Republicans. Because the Republicans picked up 10 seats in the last election, that ratio will now probably be changed to fourteen Democrats and ten Republicans.

That means that Senators Meade of New York, Maybank of South Carolina, and Doxey of Mississippi will lose their places, while three new Republican members will go on. In addition to these the new Appropriations Committee will be likely to include the following Democratic Senators: Glass (chairman), McCarran, Hayden, Thomas, Tydings, Russell, McKellar, Overton, Bankhead, O'Mahoney, Truman, Green, Maloney, Chavez. It will also probably include the following Republican Senators: Nye, Bridges, Lodge, Holman, White, Gurney, Brooks. By and large, that is a pretty conservative lineup.

OVER in the House, the Appropriations Committee at the last session consisted of twenty-five Democrats and fifteen Republicans. That will have to be changed in the new Congress to approximately twenty-two Democrats as against eighteen Republicans. Since nine of the Democrats failed to survive the election, those remaining on the committee will probably be Representatives Cannon (Missouri), Woodrum (Virginia), Ludlow (Indiana), Tarver (Georgia), Johnson (Oklahoma), Snyder (Pennsylvania), O'Neal (Kentucky), Fitzpatrick (New York), Rabaut (Michi-

¶ "IT *is the subtraction of the more radical Democratic element, plus the infusion of new Republican membership which will tend to make the new congressional committees less complacent about antibusiness legislation and administration policies.*"

gan), Starnes (Alabama), Kerr (North Carolina), Mahon (Texas), Sheppard (California), Hare (South Carolina), Thomas (Texas), Hendricks (Florida).

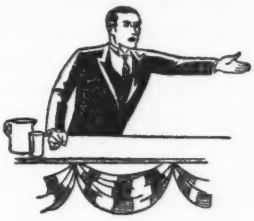
Republicans who will probably remain on the committee are Representatives Taber (New York), Wigglesworth (Massachusetts), Lambertson (Kansas), Powers (New Jersey), Ditter (Pennsylvania), Carter (California), Rich (Pennsylvania), Plumley (Vermont), Dirksen (Illinois), Engel (Michigan), Stefan (Nebraska), Case (South Dakota), Keefe (Wisconsin), Johnson (Indiana), Jones (Ohio).

The Senate Finance Committee, formerly composed of fourteen Democrats, six Republicans, and a Progressive, will probably change to twelve Democrats, eight Republicans, and a Progressive. Hold-over Democratic Senators who will probably remain on the committee are George (Georgia), Walsh (Massachusetts), Barkley (Kentucky), Connally (Texas), Bailey (North Carolina), Clark (Missouri), Byrd (Virginia), Gerry (Rhode Island), Guffey (Pennsylvania), Johnson (Colorado), Radcliffe (Maryland). Progressive Senator La-Follette will probably remain, as will the following Republican Senators: Capper (Kansas), Vandenberg (Michigan), Davis (Pennsylvania), Lodge (Massachusetts), Danaher (Connecticut), Taft (Ohio).

On the House Ways and Means Committee, half of the former Democratic membership of fourteen did not return to Congress. Probably the new ratio basis will be thirteen to twelve. Hold-over Democrats are Representatives Doughton (North Carolina), Cullen (New York), Cooper (Tennessee), Disney (Oklahoma), Dingell (Michigan), Robertson (Virginia), West (Texas). Republican hold-overs are Representatives Treadway (Massachusetts), Crowther (New York), Knutson (Minnesota), Reed (New York), Woodruff (Michigan), Jenkins (Ohio), McLean (New Jersey), Gearhart (California), Carlson (Kansas).

THE Senate Interstate Commerce Committee, formerly composed of fourteen Democrats and seven Republicans, will probably be reorganized on the basis of twelve to nine. Hold-over Democrats will be Wheeler (Montana), Smith (South Carolina), Wagner (New York), Barkley (Kentucky), Bone (Washington), Truman (Missouri), Andrews (Florida), Johnson (Colorado), Hill (Alabama), Stewart (Tennessee), Clark (Idaho), Tunnell (Delaware). Remaining Republican Senators are White (Maine), Austin (Vermont), Shipstead (Minnesota), Tobey (New Hampshire), Reed (Kansas), Gurney (South Dakota), Brooks (Illinois).

On the House Interstate and Foreign Commerce Committee, the former ratio of fifteen Democrats to ten Republicans will probably be changed to thirteen to twelve. The remaining Democrats are Lea (California), Crosser (Ohio), Bulwinkle (North Carolina), Chapman (Kentucky), Cole (Maryland), Boren (Oklahoma), Kennedy (New York), South (Texas), McGranery (Pennsylvania), O'Toole (New York). Remaining Republicans are Representatives Wolverton (New Jersey), Holmes (Massachusetts), Reece (Tennessee), Wads-



Past Predictions by the Same Prophet

(The following excerpts of events forecast for 1942 were taken from Mr. Welch's article published in this magazine one year ago.)

I. "There appears to be emerging a new kind of regulation for utilities in Washington. It is a sort of super-regulation . . . it will probably mean that Federal regulatory commissions themselves will be kept in line by higher defense organizations."

II. "If the war program bites deeper into material reserves of the nation, utilities will find it necessary to turn away prospective customers . . . This situation in turn will create the need for a rationing formula for utility service. That is definitely on the books for 1942."

III. "It would seem that if, as, and when the rationing of telephone service becomes necessary it will be the DCB that will assume the responsibility."

IV. "Until the economic position of operating utilities becomes obviously desperate, the Federal government will be just as reluctant to take the responsibility for boosting rates as the local regulatory authorities."

V. "As far as evidence would seem to indicate, the SEC is going to administer the so-called 'death sentence' without stint or delay, regardless of the war emergency."

VI. "Few legal observers are very optimistic about eventual court reversals of the advance legal positions taken by the FPC."

VII. "Municipal ownership has apparently stopped because it has run out of Federal money . . . Federal public ownership is still on the march."

worth (New York), Halleck (Indiana), Youngdahl (Minnesota), Hinshaw (California), Brown (Ohio), Simpson (Pennsylvania).

Summing up this brief and incomplete "preview" of the new line-up of these congressional committees, it will be observed that they will be somewhat more "pro business" in character than their predecessors. This observation can be appreciated by those who have followed past performance of members who will stay on these important committees as well as of those who will not return to them. It is not based on an arbitrary assumption that Republicans are necessarily more business minded than Democrats, although there may be some degree of accuracy in such a generality.

No, it is a fact that the hold-over Democrats are, generally speaking, the more conservative members of that party and it is well known that there are a considerable number of Democratic members, especially from the South, who are conservative indeed. It is the subtraction of the more radical Democratic element, plus the infusion of new Republican membership which

will tend to make the new congressional committees less complacent about antibusiness legislation and administration policies.

HOWEVER, we must not overlook the fact that the war effort will continue to be the principal preoccupation of the new Congress and, for that matter, of the Federal administration as well. This means that there won't be much legislation directly affecting utilities. There will be a tax bill, of course, and this writer looks to see Treasury recommendations which well may include sales taxes and possibly new excise levies on utilities.

In the process, the question of removing certain discriminatory features of Federal taxation against public utilities may be considered by the House Ways and Means Committee. But this does not mean that the utilities will be let off lightly with taxes. Nobody is going to be let off lightly with taxes. However, it is possible that the committee will give some thought to the need for industry to accumulate more reserves for post-war reconstruction.

It is not likely that there will be any major regulatory legislation at all during 1943. One reason, of course, is that we have passed through the dynamic phase of the New Deal regulatory reform. Such laws have been written and placed upon the statute books. Aside from vain attempts to repeal some of the more drastic aspects, there really is not much that Congress could do about the situation at this point. As already suggested, it can and probably will use its power over the purse strings to keep some of the commissions from getting too far out of line in their administration of these acts.

One exception is likely to be legislation that will permit a merger of the two domestic telegraph systems in the United States—and perhaps an international merger as well. Such legislation came within an inch of passing at the last session. It was tripped on the final parliamentary hurdle only by a combination of undercover minority labor opposition and administrative bungling in handling the bill. Since this is supposed to be an administration bill, as well as a "pro-business" bill, it should get through the new Congress without much trouble.

ON the public ownership front, the war necessity has removed many controversial projects from the likelihood of congressional action. The St. Lawrence seaway and power project, for example, has been counted out for the duration even by its most loyal promoter, President Roosevelt. This is because the completion of the project would be too late to assist war operations if commenced at this time. Therefore the diversion of men and materials to work on it under present circumstances would not be justified.

The same argument goes double for the Arkansas Valley Authority bill and several other local and regional public power projects which could not get materials from the War Production Board to go ahead with construction even if Congress were to authorize them. Aside from that, from what we have noted above, it is quite apparent that Congress has no present disposition to authorize them.

The Interior Department may make another fight to revive the Smith-Bone

bill to set up a Columbia River Valley Authority. This is more or less of a "paper project" bill which involves a question of reorganization rather than construction. The public properties affected have either already been constructed or are pretty well under way—Bonneville, Grand Coulee, and so forth. Nevertheless, the bill was stymied during the last session by a factional dispute between the Interior Department and certain home-rule elements.

The Interior Department wants to centralize the control in Washington and make the Columbia River Administrator a sort of branch manager, operating under orders of the Secretary of Interior. The home-rule element would prefer regional autonomy somewhat similar to the Tennessee Valley Authority. The prospect is that the bill will not pass in 1943. The factional conflict still exists and the opposition to strengthen the powers of government operations along this line has increased in the new Congress.

LET us leave Capitol Hill now, and move westward on Pennsylvania avenue to see what the administrative, as distinguished from the legislative, branch has in mind for the utilities in 1943. The answer seems to be: nothing very much one way or the other.

As happened in 1942, the emergency bureaus will continue to dominate congressional Federal regulation of utilities. In other words, the War Production Board, the Office of Price Administration, and the Office of Defense Transportation continue to have more to say about what utilities may do or not do than the Interstate Commerce Commission, the Federal Power Commission, or Federal Communications Commission.

There may be some jurisdictional conflict since it is apparent that the old-line regulatory bureaus do not relish this sort of "super regulation" by overnight agencies which the former are tempted to regard as Johnny-come-lately organizations without sufficient background or skill to know what they are doing.

There is evidence, for example, that the FPC may be disposed to challenge the WPB's authority to plan the mobilization of the nation's electric power reserve for war production. This would require a reversal or modification of an agreement approved early in 1942 by President Roosevelt, which gave WPB final say in this matter. There may also be friction between the ICC and the OPA on rate increases affecting carriers. The relationship of the FCC to the WPB control of communications equipment is somewhat compli-

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cated by the Board of War Communications (BWC) which, while ostensibly an emergency agency in its own right, is commonly regarded as virtually amounting to FCC control under another name.

But these friction areas will eventually be lubricated by a little administration oil. The best guess is that the emergency agencies (WPB, OPA, ODT) will be allowed to go on with their special war tasks, even though it amounts to a domination of conventional regulation in the case of the public service industries.

The WPB control over critical materials will also result in even more restrictions on utility operations than we have witnessed so far. The blocking of new utility plant and the emphasis on making existing facilities carry the utmost production load will still be WPB policy during 1943. This may result in further restrictions on telephone calls, telegrams, and the use of gas and electricity by certain less essential classes of consumers.

BUT this writer does not expect the year 1943 to produce any wholesale rationing of either gas or electric service. Furthermore, despite a considerable amount of alarming statements about power shortages, he predicts that the power industry will come through and meet the demand of war production in adequate fashion in 1943 just as it did in 1942. There may be temporary shortages in tight areas here and there, especially with respect to gas supply during the winter months.

But the fact remains that the harbingers of power shortage who have been singing the same song for nearly four years have yet to point to any result that would justify their alarm. If anything, official figures on estimated demand have been found on the high side. It would appear that insufficient allowance was made for curtailed operations resulting from shortages of steel, copper, and transition from civilian production. In plain words, our war effort, so far, has been caught short in about every other critical commodity except the one that we were warned in some quarters to fear the worst—electric power.

One exception to this somewhat optimistic view of utility operations during the war year of 1943 is transportation, especially local transportation. The steadily rising load on transit companies, caused by the laying up of private automobiles, is quite likely to result in some serious breakdowns in local transportation service. The test will come during the winter season just ahead of us. By the end of spring the government's recap plan for tires on cars of essential workers, plus an easing in the genuine gas shortage in the eastern area, should ameliorate the staggering transportation load.

But don't be surprised if some transportation collapses occur in strategic cities during the months of January, February, and March.

FEDERAL public ownership in the electric power field under the auspices of Secretary of Interior Ickes has been sailing along very well during the year 1942. But it is due for some scrutiny in 1943. WPB put the first blocks under the wheels of the Reclamation Bureau Juggernaut with its priority curtailments on public projects some weeks ago. Secretary Ickes was successful in having some of them re-

Shortages of Power

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moved and his recent statements show that he has ambitious plans for the next three years.

Briefly, by Pearl Harbor day in 1943, the Reclamation Bureau expects to have a cumulative total production of 2,592,362 kilowatts on its various projects. A year later it expects 3,180,-362. On December 7, 1945, it expects to have 3,701,462, which would produce annually more than twenty billion kilowatt hours, or nearly half the total national output in 1941. But Secretary of Interior Ickes still has those Appropriations committees in Congress to face if he would realize this ambitious program. They won't scrap such a program, of course, or anything like it, since the government has already so heavily invested in it. But they may cut it down somewhat just as WPB has already done.

Aside from the Interior Department the public ownership movement seems to be stopped in its tracks. The TVA is apparently consolidating its position and seems to be getting along fairly well with neighboring private utilities in the Tennessee valley area. It accepted WPB's restrictions on new projects several weeks ago without any noticeable opposition. It would seem that TVA has struck its stride as a going concern and if it can steer clear of Senator McKellar's vendetta against Chairman Lilienthal, will be satisfied to avoid further controversial contact with Washington or politics generally. Don't be surprised if Senator McKellar engineers a TVA investigation.

The trend towards municipal ownership of public utilities also seems to be halted, notwithstanding the opportunities provided by the SEC "death sentence" orders against holding companies to pick up local utility properties at bargain prices. San Antonio, Texas, cashed in on this, Santee-Cooper is picking over the stock, but municipalities generally are not in the buying mood.

There were few elections on the subject in 1942, which of itself indicates that the issue was not widely agitated. And of these elections public ownership won not a single substantial victory. Thus it would seem that municipal ownership has apparently been stopped because it has run out of Federal money which was so liberal during the years of the Public Works Administration.

AND that brings us to a brief consideration of post-war planning. We are not certain, of course, that the war will not end in 1943. But few in Washington expect such an event and most estimates of world peace run into 1944—late in 1944. Nevertheless, government planners are very busy with programs for reconstruction. These planners are more concerned with government spending and the spread of government ownership and coöperative movements than they are with the fate of private enterprise in the post-war world.

The National Resources Planning Board, whose name indicates that it should be busy about such things, recently issued a chart entitled "Post-war Agenda." It is very clear from this that these planners consider not only the production and development but also the distribution of electric energy as being within the sphere of government as distinguished from private enterprise in the post-war world. It is also clear that the Rural Electrification Administration will have an important part in this program—if it is ever adopted as a national policy when peace comes.

That is why we witness such a determined effort on the part of the REA to maintain an intact organization, even though it has been virtually inactive as a construction agency (for lack of materials) since its removal to St. Louis some months ago. But since these things (for reasons already stated) will not come to pass in 1943—if indeed they ever come to pass—we will skip over them as beyond the scope of this article.

No appraisal of a utility outlook for the New Year would be complete without reference to another Federal emergency agency which is coming to rival even the importance of the WPB. That is the War Manpower Commission. The concentration of man-power control under Paul V. McNutt has already produced two developments which should prove helpful to utilities in solving their man-power problems: (1) the erection of a tentative deadline of thirty-eight years of age for enlistment or induction into the armed forces; (2) the assurance of continued civilian control over man-power regulation, both military and civilian. Whether McNutt's administration will prove satisfactory remains to be seen. The job is commonly regarded as a political hot spot.

The "thirty-eight limit" should prove beneficial to utilities. Most of the really irreplaceable key men in

utilities have passed this age. The blanket deferment thus covers not only valuable family men but some otherwise subject to call for lack of dependents. It also covers many highly skilled executive or professional jobs which have so far been unrecognized as essential occupations by the War Manpower Commission. In any event, occupational deferment would be for only six months, while the "thirty-eight limit" may well prove a duration proposition.

However, the "thirty-eight limit" brings with it a corresponding responsibility for employers. Since its principal purpose was to keep the older and more responsible men for civilian duties which they are better able to perform, there will be proportionately more pressure by the military for the induction of younger men. In other words, it is going to be very hard to get occupational deferment for younger men employees at all, notwithstanding the recognition of the utilities as essential occupations.

And so utilities, as well as other industries, will have to make up their minds that they will not only have to make greater use of the "thirty-eight plus" male employees but also women, the physically handicapped, available Negroes, and other minorities, and so forth. The recent activity of the WMC Fair Employment Practices Committee in ordering the local transit company in Washington to hire more Negroes is a straw in the wind. More orders along this line are to be expected, even though utilities, especially in the South, find that the obliteration of the color line in their employment policies will mean complications in public relations and industrial relations.

UTILITIES are also in a good position under civilian man-power control. This is likely to prove even more far-reaching than the draft. McNutt has the power, theoretically, to call civilian workers off of nonessential jobs and put them to work on jobs connected with the war effort. Actually, no such crude or trouble-making approach is contemplated. Eventually, almost the same result can be obtained indirectly by channeling all hiring of new employees through the United States Employment Service. Public utilities with their established status as critical industries should make out relatively well under this arrangement.

By the end of 1943 the average town is going to look a great deal different than it does right now, even though we

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may already consider ourselves well up to the ears in the war effort. Shortages of materials have already made vast changes in our civilian life. But shortages of man power (and woman power) are going to make more spectacular changes. We are going to see lady meter readers riding bicycles. We are going to see wholesale economic casualties of less essential business enterprises, such as florist shops, liquor stores, cosmetic emporiums, etc.

A WMC official predicted privately not long ago that 80 per cent of the nation's cafés will be cafeterias by the end of 1943. Women, old men, and boys will be working in filling stations, on the street cars—yes, and even on power and communication lines. There will be pooling of utility inventories on area-wide bases. There will probably be commandeering of excess items in utility inventories by the military. There may even be pooling of maintenance, repair, and emergency crews between different utilities and city services.

But this war impact is expected. Utilities generally know what they are up against and are already preparing for it. Things could be much worse and there is a certain amount of silver lining. It is better, for example, that utility industries have been obliged to restrict civilian expansion and concentrate on necessary war service. Otherwise, uneconomic expansion of plant under the lush influence of rising mass purchasing power during the war might boomerang and turn into idle excess capacity in the *post bellum* period.

As it is, utilities nearly everywhere are building up a nice backlog of deferred civilian construction and maintenance that will fit very well into the plans for resumption of peaceful operations, when Johnnie comes marching home again looking for a job to do after taking care of the Axis.

Consideration for Small Business

"RIGHT now Britain is producing two and one-half times as much war material as we. We ought to be producing twenty times as much as Britain. We could be, if the thousands of small concerns in this country were not being given the run-around.

"The little businessman has been the runt of the litter. People assume that if a businessman is big enough, he's got to be good. That's a misconception. The 'glamor boys' and their Wall Street lawyers have talked a lot, but they have made no sacrifices.

"So far as I can see, we're fighting this war to save free enterprise. Small business has more at stake than any other group, and they know it. They know, too, that the battle of production must be won by men with grease under their fingernails and 'know how' between their ears."

—GUY HOLCOMB,
Former head, Justice Department's Small Business Bureau.

Coöperation between Utility Management and Labor

The author asserts that the employees of public enterprises are more loyal to the management than are those of the private companies, and suggests a method by which better industrial relations may be secured by the private companies.

By ALFRED M. COOPER

In times like these no one can envy the lot of management in a privately owned electric utility. What with increased costs of material, confiscatory taxation, a fantastic labor market, an arbitrary no-increase-in-rates dictum from an uncoöperative Federal administration, and below-the-belt sniping by the opposition during what is supposed to be a "blackout of politics," the power companies are finding war to be all that Sherman said it was. This is particularly unfortunate in view of the fact that these same power companies are carrying the major share of the burden in supplying our war industries with ample power for all present and future demands.

Despite the present heavy responsibilities of the private utility management it is nevertheless true that some time must be found by this management to give earnest consideration to certain problems in their industrial relations that can be solved neither by wishful thinking nor by procrastination. We can better understand the elements of this problem after we have briefly—and frankly—reviewed the industrial relations policy of the average privately owned electric utility since the turn of the century. This is necessary, since the germ of the failure of all private ownership lies in this industrial relations record.

In the early days the power company had no industrial relations policy at all and it had no industrial relations problem either. When powerhouses and transmission and distribution systems were in their experimental stages, any

man was as good as his boss because neither of them knew exactly what he was doing or how to go about doing it. If the Edison bipolars carried their load for twenty-four consecutive hours without blowing up, the occasion was celebrated as a minor miracle by all hands, from the superintendent down. Nobody made much money, but everybody was working together in the most absorbing job any group of pioneers ever tackled. Anyone who could wind an armature was considered to possess a master mind, and such a man could tell the president of his company exactly where to get off.

There was, from top to bottom, a splendid coöperative spirit based on the fact that everybody was battling a common enemy—interruptions of service—and anyone who could lick a new problem was a hero among his fellows, no matter what his rank or title happened to be. This was the heyday of industrial relations in the power industry, and it is too bad that no one had the vision to appreciate this fact and build all future industrial relations policy on the same principles of adventurous teamwork.

BUT along about here some college professor discovered that there were such things as Capital and Labor, and Management and Men, and sold his ideas to his generation of pedants. Also, he was successful in convincing the young men in the newly created engineering schools of that day that they, as the future leaders of the power industry, were destined to carry on the exciting work of developing new and fascinating applications of electrical theory, in which work they would, of course, employ lesser men, known collectively as Labor, to take care of the dull, uninteresting routine of operation and maintenance.

Because management liked the sound of the professor's credo, this became the pattern that was followed in the organization of the infant power industry. It was in this manner that management drove in the opening wedge between itself and its employees, allotting to the executives and engineers the interesting creative work, together with all responsibility, and delegating to the employees only those menial tasks which someone must perform, but which no one much enjoyed performing.

WHEN management discarded the general coöperative idea of getting things done, and set up artificial distinctions between the men of brains and the men of brawn, it needlessly made a lot of trouble for itself. The mistake here, of course, was the assumption that a majority of American workmen would remain satisfied on jobs that called for little personal initiative, and in a system of employment that attempted to limit the ultimate advancement of the individual. Naturally this system has not worked out well, as witness the number of utility executives who began work as laborers in powerhouses, and as grunts in line crews. But its institution did result in a situation in which the majority of the employees of a utility corporation felt they had no direct interest in the welfare or prosperity of that company, beyond drawing down a semimonthly paycheck.

Having thus created for itself an industrial relations problem, management has, during the past forty years,

attempted to solve this problem in many ways. Every one of these methods of solution has been based on the necessity for maintaining the brains-*vs.*-brawn relationship of management and labor while yet keeping the brawn majority satisfied with its lot.

In its earlier manifestations management's industrial relations policy might best have been summed up as "Treat 'em rough and make 'em like it." By wielding the big stick and summarily discharging any employee who dared protest against the killing monotony of his job, an effort was made to weed out all nonconformists in the then new industrial order, leaving as a satisfactory residue those subordinates who were content to let others do their thinking for them. If this system could have been maintained for a couple of centuries, undoubtedly the professor's Hitlerian dream of a small master race controlling a brainless mass of robots might well have been realized.

Unfortunately for the success of this plan, however, two unrelated factors in our development as a nation were even then operating to upset the professor's applecart. The first of these was, of course, the acceptance of the principle of universal educational opportunities for all citizens of a democracy and the resultant increase in the number of our citizens who were thus taught to think for themselves. The second factor was the appearance on the American political scene of the labor demagogue. All industrial relations programs in our utilities since 1900 have had two objectives: first, keeping thinking men and women satisfied in jobs that required little creative thought, and, second, whenever possible checkmating the activities of those labor leaders who would profit most from that very class-consciousness management now sought to encourage in its subordinates.

Under the first of these headings we may classify every paternalistic practice of management that has been conceived as a means of keeping employees interested and contented in work that, in terms of accomplishment, could have very little real meaning to them. Housing projects, pension plans, programs of sports and recreation, medical care, the house organ, and sale of company stock to employees—everything was given the workers except the one thing they wanted, which was a sense of responsibility for the success or failure of the corporation employing them. This prerogative was reserved for the creative brains at the top of the organization.

The success of the labor agitator in winning away from management the allegiance of workers who have been treated with every kindness and con-

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sideration always has mystified those company executives who have given much time and attention to the solution of industrial relations problems. It is difficult for these executives to understand how working men can be so ungrateful after all that has been done for them. For these gentlemen there may be something of especial interest in what follows.

IN the early days of the power industry there sprang up, here and there, generating and distributing systems that were owned by the municipality they served, rather than by a private corporation. The power companies viewed these municipally owned electric utilities with amusement tinged with, perhaps, a bit of apprehension.

It was generally conceded in the industry that no good engineer or executive would go to work for a municipal outfit, since all the real opportunities were to be found in the field of private enterprise. It was felt, too, that a good lineman or station operator would prefer to work for a power company rather than for a power bureau.

Curiously enough, this opinion held by the employees of the privately owned corporation became tacitly accepted as fact by the employees of most municipal power bureaus. Any executive in these city-owned utilities would privately concede that his working force was inferior in many ways to the working force of his company-owned competitor. What is more unusual, perhaps, is the fact that it was usually conceded by the rank and file employee of this power bureau that his superiors were not up to standard when compared to the higher executives of the privately owned electric utility.

IN the employer-employee philosophy developed by the professor and accepted without question by the management of the privately owned utility, such a condition of mutual disrespect as this could only result in a complete breakdown in employee morale. Actually, this acceptance of a status of general and mutual inferiority by management and subordinate alike had exactly the opposite effect in the municipal power organization.

In the city-owned power bureau you quickly sense a manifestation of the spirit of "us against the world." Firmly fixed in the mind of every employee, from general manager down, is the belief that their organization constitutes a small unit entirely surrounded by its enemies. And it is this feeling that makes such a power bureau, from top to bottom, a close-knit defensive group, with every last employee having a vital stake in the struggle for existence of their city-owned utility. The average employee of such a bureau trusts no one outside of his organization—the competing privately owned company, the general public, and, least of all, the politicians. He may decide to join a union, but in so doing he does not transfer in any degree his allegiance from the bureau to the labor leaders.

THIS feeling of being the underdog engendered by years of uphill fighting against a superior foe has accomplished more in the way of strengthening the morale of this employee group than all the employee welfare projects that the most paternalistically minded industrialist could possibly conceive. Why is this true? It is true because there exists a real community of interest between the execu-

Allegiance of Employees

"THE success of the labor agitator in winning away from management the allegiance of workers who have been treated with every kindness and consideration always has mystified those company executives who have given much time and attention to the solution of industrial relations problems. It is difficult for these executives to understand how working men can be so ungrateful after all that has been done for them."

tives and subordinates of such a power bureau the like of which is simply unknown in the privately owned electric company. In other words, the city-owned electric utility has unwittingly retained that essential sense of mutual interdependence between management and employee that the private corporation lost when it took from subordinates all real responsibility for the success of the enterprise.

I have had many opportunities to observe how this coöperative effort in the municipal power bureau works out in practice. When such an organization goes into battle against its "enemies" the spectacle is a beautiful thing to see. There is nothing to compare with it in the attitude of the working force of a private utility corporation in similar time of danger to the very existence of that corporation.

FOLLOWING its time-honored custom the management of a private utility company assumes full responsibility for everything. If the emergency happens to take the form of an election campaign in which some issue of vital importance to the company is at stake, the employees may be asked to vote right when they go to the polls, but the real job of attempting to win the election is taken care of by a select committee of top-flight executives. The individual employee has little part in the affair, and if you discuss the matter with him you will find that he views the entire proceedings with complete detachment. He has been trained for many years to leave such matters to his superiors, and he sees no reason for worrying about something that is none of his affair.

In the publicly owned utility the situation is entirely different. No one has ever tried to convince the employee of such a power bureau that his management is omniscient and he wouldn't believe it if they had. He feels as much

responsibility in such an emergency as any executive in the bureau, and he will not hesitate to criticize any action of management that to him appears not calculated to aid in winning the bureau's battle. He cheerfully—and I mean cheerfully—digs down in his own pocket and puts up his share of the money that is to be expended in this fight, and he wants to know exactly how this money is spent. If the emergency is an election campaign he is eager and willing to spend his spare time for weeks on end persuading his friends to vote in the interest of the bureau. And when the election is won he feels—and rightly—that his personal contribution to the fight has had a lot to do with its successful termination.

THE difference between the attitude of the employee of the publicly owned utility and that of the employee of the privately owned utility in such an election battle is due entirely to the greater sense of responsibility possessed by the public employee. The fact that he has this sense of responsibility makes it imperative that he extend himself to the limit in an emergency of this sort. Yet the management of the publicly owned utility cannot assume any credit to the attitude of this employee. It is entirely the result of circumstances over which neither the employee nor management has had any control.

Nevertheless, this situation should indicate the direction in which management in the privately owned utility must move if it is to counteract the effect of those forces that are now acting to destroy private initiative. We have had more than enough paternalistic efforts in our industrial relations programs. Now it is time to revert to first principles and attempt to approximate the employer-employee relationship which existed in the earliest days of the power industry. To accomplish this it will be necessary to concentrate all industrial relations activity on a single objective—that of increasing the sense of responsibility of the individual employee for the success of the organization in which he is employed.

SUCH an objective will not be as easy of accomplishment today as it would have been as late as a decade ago. Because of the mistakes that have been made, labor organizers, politicians, and a new crop of academic theorists have been enabled to drive yet deeper the wedge that existed between management and labor. Until this wedge has been entirely removed we cannot have harmony in our industrial relations. Our present situation, in which a strong labor government is attempting to widen the breach occasioned by the old-time stupid industrial relations policy of the utilities, offers no real solution to this problem.

As matters now stand many public utility employees owe a divided allegiance to their union on the one hand and to their company on the other. Of these loyalties the one embracing the union is the stronger. This is perfectly natural, following as it does nearly a half-century of effort on the part of management to set up a distinct cleavage between itself and labor. Yet we can never have any real coöperative effort until the employee's primary allegiance is given whole-heartedly to his company. To his company, mind you —not to management.

COÖPERATION BETWEEN UTILITY MANAGEMENT AND LABOR

MANAGEMENT'S job now is to get off its high horse and turn over to the employees their proper share of the responsibility for the welfare of the company. Each employee must be made to feel that without his vigilant support the company will soon cease to exist.

And since this is nothing more nor less than the simple truth it should not be difficult for management to convince the employee of its sincerity in this matter.

It now happens that corporation profits are at low ebb, and at the same time taxation has greatly reduced the differential that has always existed between the salaries paid to the executives of the utility company and the wages paid to the employees. Although management certainly had no part in creating this situation, it may find that the final effect of this new arrangement may react sharply to the company's benefit. In the same manner, the sacrifices made in common by all citizens in time of war should tend yet further to narrow the breach between management and subordinates. Anything that acts to bring the executive and the employee closer together will also serve to squeeze out from between them any third element that hopes to fatten itself at the expense of the other two.

IN some of our war industries an effort is being made to create closer harmony between management and employee by the establishment of employee-management committees in which matters of company policy will be discussed. If these committees are kept under the control of management and the employees, and are not dominated by any third interest, their organization will constitute a step in the right direction. In itself, however, this will not solve the problem of giving back to each employee in the company a full share of responsibility for its success. As everyone knows, when committees are appointed the natural tendency of those who are not members of the committee is to let the appointees to this body do the work.

A more comprehensive plan, and one in which the unpleasant features of the employee-representative idea would be eliminated, would require the discussion by every employee of the company of important matters pertaining to the welfare of that company. This would necessitate calling all employees into conferences made up of small groups, each conference to be conducted by the group's own supervisor. These meetings would convene, not at regular intervals, but only when there were important matters of company policy to be determined. In each

¶ "FOLLOWING *its time-honored custom, the management of a private utility company assumes full responsibility for everything. If the emergency happens to take the form of an election campaign in which some issue of vital importance to the company is at stake, the employees may be asked to vote right when they go to the polls, but the real job of attempting to win the election is taken care of by a select committee of top-flight executives.*"

conference the employees would be furnished with a frank, truthful statement of the problem facing the company, and after thoughtful discussion a decision would be reached on the best method of solving this problem. Consensus of employee opinion, as represented by a tabulation of the votes of the employees in the various conference groups, would be binding on management.

DECISIONS regarding routine matters of management would, of course, not be referred to the employees for consideration. But no important matter of company policy would be decided until the employees as a whole had been given an opportunity to cast the deciding vote on the question.

It may be argued that the employees would occasionally make mistakes in judgment if they were thus given a voice in management, and this is a reasonable contention. However, the record of management in this respect is by no means perfect, and there would be fewer mistakes made when 5,000 brains tackled a problem than when 2 or 3 conceivably superior brains make decisions that were binding on the 5,000. Furthermore, as the employees saw their consensus decisions actually being put into effect in major matters of policy, they would accept their responsibility with increasing seriousness, and their decisions would reflect their improved sense of responsibility.

IF such an attempt was made to secure the complete confidence and coöperation of the employees, it would be successful only if it were conceived and executed in a spirit of wholehearted sincerity on the part of management. When a problem in policy was put before the employee conference groups, every factor entering into that problem must be made clear to the employees. This would mean the end of all secret diplomacy in the conduct of company affairs, and judging by the results that have been attained by such diplomatic maneuverings, only good would follow such abolishment.

Whether or not this method of securing employee participation in management is put into effect, it should be obvious that some equally effective device should be instituted in the privately owned electric utility, and at once. The sooner every employee of such a utility is made to feel a personal sense of responsibility for the success of his company, the quicker we can close the gap between management and employee and cut out the intervening dry rot that is now undermining private enterprise.

"EAGER to contribute their share to the war effort, transit men are confused by the lack of a clearly defined national policy with respect to local transportation. One day there seems to be general agreement that the shortage of rubber demands a sharp reduction in the use of private automobiles and much greater reliance on public transportation. The next day a pronouncement is made implying that almost complete reliance will be placed on the private auto to meet the war-time need for local transportation. Under these circumstances no one responsible for transportation planning can get to first base."

—EDITORIAL STATEMENT, *Transit Journal.*

The SEC and the War

Insistence, during the present emergency, on the rapid compliance with the "death sentence" provision of the Holding Company Act designed for peace-time conditions believed by the author not to be in the public interest.

By ERNEST R. ABRAMS

PSYCHOLOGISTS tell us that one of the dominant traits in human behavior is preservation of ego. Each of us thinks he's some pumpkins in the scheme of human affairs, and will fight like a wildcat to prove his importance. More than that, once each of us has gained a little authority over the other fellow, it usually takes more than a run-of-the-mine war to knock us loose from it. That may account, in part, for the hostility of the Securities and Exchange Commission toward a suggested moratorium for the duration of enforcement of the "death sentence" of the Public Utility Holding Company Act.

One hardly would expect such opposition from supposedly judicial minds. Innumerable programs of government, promising distinct social benefits, have been sidetracked to further the war effort. And many desirable regulatory statutes, enacted in times of peace, have been tempered in their administration to permit industries essential to the war program to move full-steam ahead. In fact, the daddy of all Federal administrative and regulatory agencies—the Interstate Commerce Commission—with close to sixty-six years of experience in the regulation of public services, recently had this to say about its statutory obligations to the nation, and to the enterprises under its jurisdiction:[1]

> It is axiomatic that the systems of regulation of common carriers which have been devised by Congress and the states have been primarily conceived for normal times of peace and to apply under conditions of normal competition between carriers and

[1] Report of the American Bar Association's Special Committee on the Effect of National Defense Laws and Regulations, presented at the annual meeting in Detroit on August 24-27, 1942, and undersigned by Clyde B. Aitchison of the Interstate Commerce Commission and Herbert S. Marks of the War Production Board among others—Transportation Section.

between shippers. Many features of regulation which are entirely sound in times of peace become obstructive to efforts to the national defense if enforced too rigidly in times of war. . . . Regulatory machinery, in time of war, has to be geared to the tempo of the war effort.

AND the Attorney General of the United States, after stating that the Department of Justice had no intention of instituting any proceedings against common carriers, "which will impede or obstruct the war effort," recently said:[2]

In order to dispel whatever misconception may exist, I should like to state simply that no investigation into or disturbance of the existing normal and established activities of carrier rate bureaus and conferences is contemplated by the department. I feel that any such program at this time would unduly diffuse the activities and energy of the carriers and hence unnecessarily burden them.

IT is regrettable that the Securities and Exchange Commission, a relatively new Federal administrative agency, sees no connection between the attitude of the Interstate Commerce Commission and the Attorney General toward common carriers in time of war, and its own attitude toward the regulation of electric and gas utilities. Surprisingly, the SEC still insists that the dismemberment of public utility holding companies, whose operating subsidiaries now are supplying the very sinews of war, is a contribution to the war effort. In the midst of a national emergency, it still presses for a "rapid compliance" with § 11 of the Holding Company Act. And it bases its arguments in defense of this pressure upon "evils" of the past, long rendered nonrecurrent by the several acts it now administers.

The SEC appears unable to get utility sins of the roaring 1920's off its mind. The seventh annual report of the SEC, the section covering the Public Utility Holding Company Act of the report described in footnote 1, and speeches since Pearl Harbor of individual commissioners, all suggest that real or fancied sins of utility holding companies, long since outlawed by statutes the SEC itself administer, form the basis of its opposition to a moratorium, and constitute its main reason for insistence upon an immediately attempted dissolution of holding companies, regardless of its effect on security holders. This attitude is surprising, particularly when the SEC largely has ignored another equally important section of the Holding Company Act. But more of that later.

THE arguments of the SEC for a hurried demise of utility aggregations in the thick of a global war run in this fashion: First, a necessary step in the direction of efficient expansion of power facilities and service on the part of operating companies in aid of the national emergency lies in clearing away financial impediments arising from holding company needs of revenues to support top-heavy capital structures and fixed dividend requirements.[3] Second, certain holding companies are vulnerable in the light of threatened reductions in net earnings to interest defaults and bankruptcy, or accumulation of dividend arrears.[4] And, third, holding company financial structures must be put in shape[4] to withstand the

[2] *The New York Times* at page 33, November 13, 1942.

[3] *Re* Commonwealth & Southern Corp. (SEC 1942) 45 PUR(NS) 1.

[4] Public Utility Holding Company Act section of report described in footnote 1.

shock of post-war adjustments. Suppose we examine each of these major arguments in favor of an attempt to "bump off" utility holding companies in the midst of a national emergency.

The first of the SEC's contentions, designed to justify pressure for a "rapid compliance" with the "death sentence" provisions of the Holding Company Act, is a stock argument of regulatory officials and public ownership advocates. It is based on the false conception that a top-heavy capital structure automatically results in an unwarranted flow of revenues from operating subsidiaries to parental holding companies. Its lack of validity immediately becomes apparent when it is realized that, even without its "death sentence" provision, the Public Utility Holding Company Act and the Securities Act of 1933, rightly administered, give the SEC ample power to control capital engagements of registered utilities, "in the interest of investors and consumers."

To be sure, a high proportion of debt in any capital structure, be it that of a regulated public utility or of an unregulated industrial enterprise, is inviting default and bankruptcy in lean years. Corporate managements long have recognized this, and have tried to guard against burdensome debts. But it is equally true that most capital structures generally have reflected the desires of those with funds to invest. A decade and a half ago, investors, the country over, ignored all but convertible bonds in their anxiety to buy stocks. Today, so far as utilities are concerned, investors have turned thumbs down on equities, and insist upon buying debt securities. Furthermore, people with funds to invest have not paid much heed to statutes devised by Congress and the states to protect them from their own folly. They have not looked with favor on attempts to direct their investments along "ideal" patterns, or to interfere with their constitutional right to make bad investments, if they so desire.

But, more to the point, in what way have holding company ownerships of operating gas and electric utilities handicapped our war effort? In what areas has holding company control of operating systems caused any inconvenience or delay to industries producing the essentials of war? Has that ownership resulted in any shortage of energy in defense areas? In the twelve months ended with August, 1942, elec-

¶ "The *Inter-Allied Information Center in New York recently compiled a bibliography, listing some 500 news and magazine articles, books, pamphlets, and reports, dealing with some phase of post-war reconstruction, which were published between January 1, 1940, and May 31, 1942. Moreover, added discussions of post-war problems are appearing at the rate of some 75 a month. Of course, the SEC will read and digest all these contributions to the literature, before it puts holding companies in shape to withstand post-war adjustments.*"

tric consumption in the United States was a third higher than in the August, 1939, year, with industrial use accounting for three-quarters of that increase; installed generating capacity was about a seventh greater; and the sum of non-coincident peak demands increased about a third. But this factor was largely offset by an increase of more than a fourth in utilization. Boiled down to reserve capacity, available data indicate that approximately a quarter of the nation's installed electric generating capacity was idle and waiting for more war business last August. And when one realizes that nearly three-quarters of all electric utility service in the land was rendered last August by operating subsidiaries of holding companies, it is difficult to reconcile this record of performance with the SEC's claim that top-heavy holding company capital structures must be cleared away to further our war effort.

THE SEC's second contention that, due to declining net income, certain holding companies are vulnerable to interest defaults and bankruptcy, or to accumulation of dividend arrears, merits a story. About nine years or so ago, some agitator so aroused the half-brained element in Ponce, Puerto Rico, that a gang of hoodlums ran around the town, pulling meters out of consumers' homes and piling them on the electric utility's doorstep. And then, just to make everything screwy, the insular regulatory authority immediately ordered a reduction in domestic rates on the theory that, having lost so many cash customers, the value of the utility's property had declined.

In a sense, something like that is going on in America today. With the full approval of privately owned utilities, the Federal government now is taking a vastly increased proportion of their revenues in the form of taxes, which promises to reduce the average 1942 net income of private electric utilities to about a fifth below 1941 figures. And, obviously, from an earnings standpoint, these private power systems will be worth proportionately less. But is it fair to base utility values or earning power on 1942 results, particularly when the cause of reduced earnings is not lack of business, but expanded Federal exactions? Certainly, no Federal or state regulatory body today believes that Federal taxes will continue at present levels indefinitely in post-war years.

YET, through pressure for a "rapid compliance" with the "death sentence" in the midst of a national emergency, when sharply increased Federal exactions have reduced private electric and gas utility net income to the lowest proportionate figures in history, the SEC, in effect, is proposing that their values be frozen at present levels.

No doubt interest defaults and bankruptcy, or accumulation of dividend arrears, will threaten in a few isolated instances, due to decreased net income in the war period. But once hostilities have ceased, once this costly war is at an end, it is reasonable to assume that some relief in the form of lower Federal taxes will be forthcoming, with a beneficial effect on utility earnings. When a man breaks his leg and is carted off to the hospital, his creditors usually don't sell him down the river, because his net income has declined in the midst of an emergency. They gen-

Private *versus* Public Enterprise

"WHEN private enterprise, through holding company ownership of subsidiary operating systems, sets up an integrated system for the efficient and economical production and distribution of power, it's an 'evil.' But when agencies of government integrate power facilities in 13 states to accomplish the same ends, it's 'hot stuff.' Sauce for the goose, apparently, isn't sauce for the gander, when the New Deal serves it up."

erally give the poor cuss a chance to get back on his feet, and work himself out of a hole. Is it too much to expect that the same milk of human kindness will course through the veins of utility investors in the midst of a national emergency?

The third SEC contention — that holding companies must be put in shape to withstand the shock of post-war adjustments — certainly is ambitious. Here we are in the thick of a global war, the duration of which is impossible of present estimate. We have no idea of the amount of wealth to be destroyed during it, the state of international relationships to prevail after it, the nature of the peace to be negotiated, or even the character of enterprise system under which we shall operate, once hostilities have ceased. Yet, the SEC proposes now to put holding companies in shape to cope with that uncertain future.

THE Inter-Allied Information Center in New York recently compiled a bibliography, listing some 500 news and magazine articles, books, pamphlets, and reports, dealing with some phase of post-war reconstruction, which were published between January 1, 1940, and May 31, 1942. Moreover, added discussions of post-war problems are appearing at the rate of some 75 a month. Of course, the SEC will read and digest all these contributions to the literature before it puts holding companies in shape to withstand post-war adjustments. But wouldn't it be too bad if the commission didn't shoot straight, or if the devil jumped up, right after it had holding companies all fixed for the post-war period? Then it would have to do the job all over again.

In addition to these SEC contentions, there is another phase of "rapid compliance" with the "death sentence"

that is deserving of consideration. As all of us know, the War Production Board has become a factor in electric and gas utility regulation. Realizing early in the defense effort that adequate and unfailing supplies of electricity and natural gas were indispensable to an all-out industrial production, WPB's power division, first under the able direction of J. A. Krug and later under Herbert S. Marks, decided red tape and regulatory stuffiness could make no contribution to the war effort. So it abrogated established rate schedules and energy contracts, and instituted in their stead a set of flexible directives.

Under the terms of these directives, utilities sometimes were required to deliver to a customer less than the minimum demand specified in his contract; consumers with interruptible contracts, if engaged in essential war work, might be supplied with firm power; nonessential consumers with firm contracts might be interrupted; utilities could be required to operate high-cost stand-by plants to insure deliveries to low-priced essential consumers, and consumers with stand-by facilities of their own could be compelled to operate them, regardless of cost.

BUT, more important, WPB (and by these letters are also meant its predecessor, the Office of Production Management) committed one of those "evils" for which the SEC, as administrator of the Holding Company Act, thinks holding companies should be torn apart in the midst of a war. WPB's reasons for committing this "evil" run like this. Water conditions in the TVA area were terrible in the fall of 1941. Mill ponds were running dry and power-plant reservoirs were inching down to threatening levels. Yet, not only were there aluminum plants in the region, but many other essential industries, that had to be kept running, if we and our Allies were to get urgently needed materials and equipment of war.

What to do? Why, the very thing any experienced utility operator would have done, if freed from red tape and regulatory restrictions. Through an appeal to operating systems, rather than by order, "Cap" Krug integrated publicly and privately owned generation facilities in 13 states, which immediately began pouring all the power he needed into the Southeast. In the words of WPB section of the report, described in footnote 1:

> In excess of 40,000,000 kilowatt hours a week were imported into the Southeast an amount exceeding by nearly 15,000,000 kilowatt hours the highest imports which had ever been made before that time.

When private enterprise, through holding company ownership of subsidiary operating systems, sets up an integrated system for the efficient and economical production and distribution of power, it's an "evil." But when agencies of government integrate power facilities in 13 states to accomplish the same ends, it's "hot stuff." Sauce for the goose, apparently, isn't sauce for the gander, when the New Deal serves it up.

THE insistence of the SEC on a "rapid compliance" with § 11 of the Holding Company Act is peculiar, in view of its neglect of § 30. Under that section of the act, the SEC is "authorized and directed to make studies and investigations," among other things, "of public-utility companies,

the territories served or which can be served . . . to determine the sizes, types, and locations . . . which do or can operate most economically and efficiently in the public interest" and "in the interest of investors and consumers." Furthermore, § 30 provides that "upon the basis of such investigations and studies the commission shall make public from time to time its recommendations as to the type and size of geographically and economically integrated public-utility systems which . . . can best promote and harmonize the interests of the public, the investor, and the consumer."

In other words, the Holding Company Act "directed" the SEC to set the patterns to which every gas and electric holding company in the land was required to conform. So far, unfortunately, the commission has drawn patterns for relatively few holding company systems, and then only upon their insistence. But if the SEC had been as energetic in its own compliance with § 30 of the act as it was in attempting to enforce compliance by holding companies with § 11, a "rapid compliance" with the "death sentence" might now be well on its way to accomplishment, and without the risk of serious loss to investors inherent in its present procedure.

FOR once these patterns had been drawn for all holding companies; each of them would have been advised not only of the operating subsidiaries every holding company might retain, but those which each of them were required to turn loose. Then, with these official road maps in hand to guide them down the uncertain path to full compliance with § 11, holding companies could have negotiated property swaps among themselves, and ended up by each owning a closely knit, fully integrated operating group. And, obviously, under that procedure, the interests of the public, the investors, and the consumers would have been protected.

In the section dealing with the Public Utility Holding Company Act of the report mentioned in footnote 1, the following will be found:

> The various statutory standards (of the Holding Company Act) are qualified in terms of the public interest, the interest of consumers and investors. "Public interest" is, of course, dominated by the war effort and the commission has also pointed out that war industry is an important component of this class.

If the SEC sincerely wishes to protect the interests of consumers and investors, the while contributing to the war effort, it would appear it could best do so by a "rapid compliance" on its own part with § 30 of the Holding Company Act, not by attempting to force a "rapid compliance" with the "death sentence" by holding companies in the midst of the most serious emergency ever to face this nation.

Radios Run Trains

RADIO controls regulate the movement of trainloads of explosives through the switchyards of the Elwood ordnance plant at Joliet, Illinois, without the use of signal blocks, according to a War Department announcement. The plant has 80 miles of railroad track, and when operating at capacity will handle about 300 cars of its own.

Wire and Wireless Communication

To enable telephone companies and other operators of telephone services to make emergency repairs quickly in the event of a plant breakdown, use of an AA-2X preference rating is authorized in such cases and an AA-5 blanket rating is provided for maintenance, repair, operating supplies and operating construction, under Preference Rating Order P-130 as amended December 9th.

Besides expediting delivery of materials for emergency plant repairs, the amended order is also designed to permit prompt acquisition of such equipment and supplies as may be needed to meet emergencies in connection with telephone traffic for war plants and military or naval establishments.

The AA-5 rating will be applicable hereafter instead of the A-1-c preference rating previously permitted for obtaining materials to be used in construction of facilities to serve defense projects.

The new version of the order establishes control by the communications equipment division over the use by operators of the blanket rating assigned defense projects in the P-19 series, to obtain necessary materials for construction of facilities to serve those projects.

Last month's revisions further clarify and limit the amounts of material to which the blanket rating may be assigned for operating construction. The term "operating construction" as defined in P-130 means the use of materials for construction of exchange and toll telephone plant, including such telegraph and teletype service as may be carried on by the operator of a telephone system.

Further control is provided over the total amount of material (both new and reused) that may be acquired for "operating construction," through limitations on the use of the rating. An operator is permitted some latitude, however, in applying the blanket rating to obtain material for use with other material or equipment taken from inventory or from plant to meet temporary traffic or emergency requirements.

Order P-130, as amended September 8, 1942, permitted use of the blanket rating to obtain material for operating construction not to exceed $2,500 in any single instance. This limitation was applied to telephone exchange plants. The revision extends the limitation to include toll telephone central office equipment. It further limits use of the rating where the total cost of material (both new and reused) exceeds $5,000 in any single case.

A new subparagraph (c) (1) (iv) prohibits use of the blanket rating to obtain material for operating construction, unless the material is to be used to meet certain defense categories as described in Limitation Order L-50, and then only where the total cost of material both new and reused in any single case does not exceed $500.

No dollar limitation is imposed upon

the amount of equipment that may be taken from inventory or plant to meet temporary traffic or emergency requirements. However, any material or equipment so used must be restored to the original location in plant or to inventory within thirty days, unless permission is obtained from the communications equipment division for its continued use in the new location.

Subparagraph (e) (2) is clarified by a minor change of wording. The change makes explicit the intent of the order to permit exclusion from an "operator's inventory of material" of any supplies which are to be utilized for defense projects that have been specifically authorized by the War Production Board.

A new subparagraph (a) (8) clarifies the meaning of the term "equipment of a superseded type," with reference to stocks of such equipment in so far as it is kept available for service in war time.

Three new forms are required in connection with the enlarged controls that are set up under Amendment No. 1. These are PD-684, PD-685, and PD-716.

Form PD-684 will be used with the AA-2X rating.

Form PD-685 is an application for authorization to use the defense project rating conditionally assigned through the present amendment to the order.

Form PD-716 will be used when application is made to continue beyond thirty days the use of material or equipment installed to meet a temporary traffic or emergency requirement.

* * * *

THE telegraph merger bill tripped on the last legislative hurdle a few days before the Seventy-seventh Congress adjourned its session *sine die* on December 17th. There was no substantial opposition to the bill which had been approved by the Senate and in a somewhat different form by the House Interstate and Foreign Commerce Committee. However, Representative Marcantonio of New York blocked consideration of the measure during the closing days of the session when Representative Bulwinkle of North Carolina requested unanimous consent of the chamber to bring the measure up.

The promoters of the bill could undoubtedly have obtained a favorable rule from the Rules Committee, were it not for the fact that it was impossible to obtain a quorum during the dying days of the session.

It is expected that Representative Lea, chairman of the House Interstate and Foreign Commerce Committee, will reintroduce the bill early in the next session, as will Senator Wheeler, chairman of the Senate Interstate Commerce Committee. In view of the extensive hearings which have been held, it is not expected that there will be any considerable delay in the committees and Washington observers believe that chances are bright for enactment of the bill early in the next session.

Despite strenuous opposition from the Navy, the House committee favored including in the bill a provision that would allow the merger into a single company of all international communications systems. The Senate had already passed the bill in a form which would restrict the merger to the domestic telegraph systems.

Naval officers testified that the merger in the international field might seriously jeopardize the security and the secrecy of essential communication. Such a merger, it was suggested by Captain Joseph R. Redman, director of naval communications, might subject the American communications system abroad to foreign influence.

This same line of attack was taken in a lengthy memorandum prepared by the American Communications Association, CIO, which also has strenuously opposed the domestic merger proposal. The memorandum, showing the far-flung connections of the International Telephone & Telegraph Company, particularly with companies in Axis countries, was brought to the attention of House members during the last session.

* * * *

A REQUEST by the American Telephone and Telegraph Company for dismissal or postponement of the

pending inquiry on rate reduction proposals has been denied by the Federal Communications Commission. Hearings began in Washington on December 16th. In support of its petition, AT&T had contended that any rate reduction at this time would interfere with successful prosecution of the war as it would stimulate long-distance toll traffic.

In its order the FCC said that there was no necessity for the company to present evidence as to its separation of the property, revenues, and expenses of the other telephone carriers participating in interstate service. The company had contended that the date set for the hearing, December 16th, did not allow sufficient time in which to prepare an answer because of the work involved in the separation process, and asked for a delay until April 1st.

The commission said the company should present in writing on the hearing day the nature of the evidence upon which the request for more time was based. It said a decision would be made at that time as to the necessity for a continuance.

The commission designated Commissioners Paul A. Walker, Ray C. Wakefield, and Clifford J. Durr to conduct the proceedings and to submit appropriate reports thereon to the commission. Mr. Walker was designated chairman.

SOME forty independent telephone companies identified with the Gary interests have filed a statement of policy with the Federal Communications Commission in the so-called toll separation "proceeding" (Docket 6328), which takes an unequivocable position in favor of the so-called "station-to-station" basis for determining the cost of toll service. Other independent groups were reported to be considering this general subject matter and interesting developments along this line were said to be in early prospect. The argument that the station-to-station basis for computing toll line calls (as distinguished from the "board-to-board" basis which has been followed by the Bell system heretofore) results in more equitable treatment of connecting carriers, including independent telephone companies, was developed by the Gary group brief filed by its Washington attorney, Carl I. Wheat.

There is, perhaps, no near degree of unanimity among the independent telephone companies on the proposed shift of toll cost determination from board to board to station to station. Some companies, after careful consideration of their position, feel that their interests might be better protected by retention of the board-to-board system.

There was also some argument to the effect that adoption of the station-to-station basis would result in an intrusion of Federal (FCC) jurisdiction into local exchange matters. Finally, there is the general problem of whether it is better to have more property transferred to toll line account (which would be the case generally under station to station) to avoid continuous and unnecessary toll rate reductions or keep such property in the local exchange rate base (which is the general tendency of board to board) to avoid continuous and unnecessary toll rate exchange reduction.

PRICE Administrator Leon Henderson asserted that a reduction in long-distance telephone rates would aid his price-control program as he sought to intervene in the FCC hearing into AT&T rates. Henderson's petition called attention to the FCC order citing alleged earnings by AT&T of from 14.92 per cent to 24.37 per cent on its investment in telephone assets devoted to long lines service. He said that "reduction of prices where profits are excessive is an integral part of national policy of economic stabilization."

He said the company's proposal to consider Federal income and excess profits taxes as operating expenses would conflict with the government's program to prevent inflation, stabilize prices, and prevent avoidable increases in living costs.

"An order reducing telephone rates and thereby eliminating excess earnings," the petition said, "will reduce the expenses of the national government in

the conduct of the war, . . . the expenses of thousands of business organizations whose maximum prices have been fixed by this office, and reduce the cost of living of telephone subscribers throughout the nation."

Also seeking to intervene were the Southeastern Association of Railroad and Utilities Commissioners and the Arkansas Department of Public Utilities. Their counsel, Frank B. Warren, assistant general solicitor of the National Association of Railroad and Utilities Commissioners, asked thirty days in which to prepare a study of cost and revenue distribution of earnings from interstate message toll rates. Warren said the purpose of the study "is to demonstrate that the associated companies and connecting companies (in the Bell system) are in effect milked by the parent company (AT&T) for the purpose of establishing an artificially high level of earnings for Long Lines . . . at the expense of the user of local service."

THE first witness was Mark R. Sullivan, operating vice president of AT&T, who said the work of handling calls had increased during the war along with the increase in traffic because the crowded wires required more attempts to complete a call. He added that the proportion of person-to-person calls and the length of calls had increased, requiring additional exchange boards' activity.

At the start of the hearing, AT&T submitted a prepared statement supporting its request for a delay in order to prepare material on costs, earnings, and other issues which it said should be considered. On December 17th the hearing was adjourned until January 20th.

* * * *

THE Federal Communications Commission has limited all new construction of telephone and telegraph lines to those which serve "an essential military need or a vital public need which cannot otherwise be met." Acting at the request of the Board of War Communications, the FCC issued an order requiring any application for construction of new lines to show military or vital public need.

Such applications must be supported, the commission said, by a statement of need signed by the Army's chief signal officer, the director of naval communications, or the Coast Guard's director of communications; an order of requisition signed by the authorized representative of a governmental department to be served by the line; or a complete statement of facts and circumstances to demonstrate the necessity of the proposed line.

The commission said that such documents need not be submitted for pending applications unless specifically requested.

* * * *

CHAIRMAN James Lawrence Fly of the Federal Communications Commission said recently that something must be done to help small radio stations losing revenue because of the war. He told reporters that some of the stations were hard pressed financially because of a decrease in local advertising from which they receive most of their revenue.

There was a possibility of loans, Fly said, adding that this would raise the question of giving the government a stake in private broadcasting. He also expressed doubt of the feasibility of relief through tax adjustments.

Fly declined to express an opinion on suggestions that the government might permit the stations to deduct from income taxes as business expenses the time devoted to war bond sales and other government announcements.

* * * *

THE Indiana Public Service Commission resumed hearings last month on a petition of the United Telephone Company, Inc., for authority to increase rates.

Amounting to about $87,000 annually, the rate increase is sought on the ground that the man-power shortage makes the company unable to meet competition under present wage scales and maintain adequate service.

The company serves territory in Johnson, Benton, White, Pulaski, Starke, Marshall, St. Joseph, Fulton, Miami, Kosciusko, Lagrange, Steuben, Whitley, Noble, DeKalb, Wells, Jay, and Grant counties.

* * * *

ALL communications for the new WAAC training center at Daytona Beach, Florida, have now been taken over by the auxiliaries themselves.

The chief operator in charge of the signal office is Auxiliary Hazel H. Hamilton, who has had seventeen years' experience as a switchboard operator in Los Angeles. Supervisors are Auxiliaries Marion L. Jacke, of Hollywood, California; Florence C. Gear, of Portland, Oregon; and Clara Goldman, of Long Beach, California.

Operating the post telegraph are Virginia M. Varnas, of Detroit, and Catherine M. Scannell, of Philadelphia, both of whom have worked several years for Western Union. Chief signal officer is Captain Hubert A. Corbe, who was an equipment engineer with the Bell Telephone Company in Harrisburg, Pennsylvania, for twenty years.

* * * *

PRIORITY requests for immediate long-distance telephone service have risen steadily since the priority system became effective on November 1st and now average 405 a day, mostly to Washington, the New York Telephone Company disclosed recently. A total of 7,500 priority calls received precedence over regular long-distance calls in November.

The priority calls do not interfere with the regular calls yet, it was said, because the city's long-distance boards handle a daily average of 72,600 outgoing calls with little difficulty. All calls have been of No. 2 or No. 3 priority rating, which means they were designated "immediate" or "prompt" and were sent to the head of the waiting list, if any, on long-distance circuits.

There have been no No. 1 priority calls. The No. 1 call, which has immediate priority over any other call, involves disasters, enemy danger, urgent troop movements, and other calls of critical nature.

Those who have the right to ask for telephone priority are the President, Vice President, Cabinet officers, members of Congress, the Army and Navy, all public officials, foreign consular and diplomatic officers, civil defense forces, aircraft warning services, Red Cross, newspapers, press associations and communication, utility and transportation industries, and other essential war industries.

* * * *

TELEPHONE and telegraph companies paid $10,000 or more last year to 642 officials, of whom 293 got increases over their 1940 pay, the Federal Communications Commission disclosed last month in an annual salary report.

The best paying job, of course, was that of president, the thirty-three men holding that title among the 48 companies which reported employees in the $10,000-a-year class averaging $36,000 each. The next best average pay was the $25,000 for general counsel, while the forty-five vice presidents listed averaged $22,000. The commission said that 89 telephone and 15 telegraph carriers report to it, but only 39 of the former and 9 of the latter paid salaries as high as $10,000.

The individual salaries were identified only by title and company, but the largest salary—$206,250 for the president of the American Telephone and Telegraph Company—obviously belonged to Walter S. Gifford of New York.

* * * *

THE U. S. Supreme Court agreed on December 14th to review a decision which dismissed suits by the National Broadcasting Company, Inc., and the Columbia Broadcasting System, Inc., seeking to enjoin the FCC from enforcing restrictions on chain broadcasting. A 3-judge Federal court at New York had held that the commission's action was authorized by the Federal Communications Act. Enforcement of the order was stayed temporarily, however, to permit an appeal to the Supreme Court.

Financial News and Comment

By OWEN ELY

The Confusion over Original Cost and Write-offs

PASSING of the Niagara Hudson Power preferred dividends recently drew attention to the recurring problem of "write-offs" and other accounting readjustments in the book value of electric light and power operating companies' plants. There are many technical angles and the layman may well be confused by the intricate problems of commission jurisdiction, the slow progress in reaching final decisions, the occasional drastic actions which result in dividend omissions or deferment of financing plans, etc. Space does not permit any analytical contribution to the problem, but possibly a brief summary of the present situation may be of interest.

The Federal Trade Commission some years ago prepared a comprehensive study of utility "write-ups" and, while this work has not been officially tied in with the activities of the SEC and the FPC, it doubtless furnishes a statistical background for many of their findings.

The present trend at Washington is to go a step farther and seek to reduce utility book values to original cost when the plant was *first devoted to public use, i. e.*, when it was constructed. The FPC, which already had power to study cost records of hydroelectric companies licensed under the old Federal Water Power Act, was given broad new powers under the Utility Act of 1935 to require original cost records to be prepared; the SEC was given partial and overlapping powers in connection with its own activities.

In general, the two commissions act independently, though in the recent Niagara Case they apparently worked together.

THE major difficulty of administering this program has been the old problem of interstate *versus* intrastate regulation. The Federal commissions do not have power to regulate intrastate companies, except where these companies have federally licensed hydro properties or are subsidiaries of registered holding companies; and the FPC has tried to broaden the definition of "interstate" to include companies which sell power passing over state lines (as with certain Connecticut companies, which have been attempting to avoid Federal regulation). What amounts to a wartime truce between certain companies and the FPC, in the latter's fight to get them under the Federal umbrella of regulation, has occurred in some cases.

While thus limited in jurisdiction to perhaps about half the utility industry, Washington has succeeded in bringing many state commissions into line with its own cost accounting theories, so that there has been more or less of a united regulatory front except for the fact that certain states, such as Texas, Ohio, and some others, do not undertake full regulation of accounts, and constitute a "twilight zone."

The FPC's statistical staff has been conducting original cost studies of the operating companies for several years. Reports have been issued for about forty-five companies, aggregating in size about one-tenth of the electric power and light industry. But these are not final reports—they are merely statements of

the problem showing the existing differences of opinion between the companies and the commission's staff. In many cases they amount to little more than an exact statement of the problem and a review of the work done thus far. Obviously many years' work remains to be done before final findings can be issued and even then the courts may be called on to review many of these findings.

In the case of Niagara Falls Power, recent orders of the FPC and the SEC required the company to adjust (principally as a deduction from earned surplus) $15,787,688 or over one-third of the 1921 book cost of the federally licensed hydro Project 16 at Niagara. This resulted in the passing of all preferred dividends by the Buffalo, Niagara & Eastern and Niagara Hudson. (See FORTNIGHTLY of October 22nd, page 564.) Later the commission relented somewhat, giving the company permission to make the adjustment out of *capital* surplus, which would permit resumption of dividends. In the meantime, however, the case had been taken to the courts.

ANOTHER recent case is that of Carolina Power & Light, in which the SEC on December 18th conditionally approved an $18,648,438 write-down in plant value. In this case the commission permitted the company to write down its common stock capital to $10,000,000, to eliminate the deficit in earned surplus which would otherwise have resulted from the write-off. National Power & Light also made a "capital contribution" to Carolina through cancellation of 1,422,609 common shares, and certain other adjustments were made. These transactions will permit the Carolina Company to effect an agreement with the SEC whose studies indicate "identifiable write-ups of at least $23,623,538."

Turning to the FPC staff's earlier cost report on Carolina, we find that the company had previously acknowledged that the book value was about $10,333,000 in excess of original cost (sum of accounts 100.5 and 107), while the commission had definitely claimed a difference of $23,920,862 and had also placed most of the remaining plant value in account 100.6 ("electric plant in process of reclassification"), indicating that further adjustments might be made. The SEC figure tallies fairly well with the FPC preliminary findings. The company apparently compromised by "accepting" about 78 per cent of the write-off.

The valuation picture is further confused by the fact that plant depreciation charges as reported to the Treasury Department have differed widely in many cases from those reported to stockholders, and also by the fact that "rate base" figures have been compiled both by the companies themselves and the state commissions in connection with local regulation of rates.

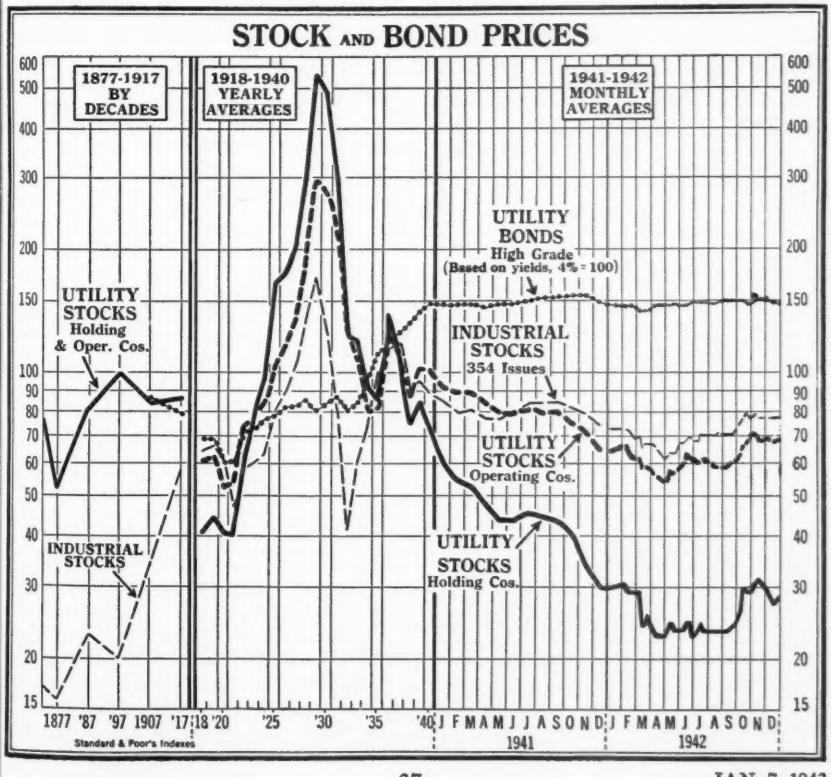
It seems probable that the two Washington commissions will continue their negotiations for the gradual reduction of plant accounts toward an original cost basis, and this in turn will affect "rate base" figures used by the state commissions in regulation of rates. Without debating the merits of the program itself, it is obviously the duty of all concerned to try to effect any necessary readjustments or write-offs without undue strain on utility finance. The Niagara Case illustrates the disturbing effects which may result from too harsh an application of cost findings. There seems no good reason why the *original* order could not have permitted the adjustments to be made through stated capital value, instead of merely through earned surplus, which would have avoided passing of preferred dividend payments amounting to nearly $6,000,000 per annum. Cancellation of these payments resulted in a decline in the market value of securities which had enjoyed investment ratings based on unbroken dividend records and substantial share earnings.

In the case of Carolina Power & Light Company, the SEC has asked the company not to declare common stock dividends except on fifteen days' advance notice to the commission. This order does not seem unreasonable, since Carolina's

the company's securities. In most cases earnings on its common stock have not been large and the dividend contribution to National has (in recent years) amounted to only $600,000 a year. The important point is that payments on the preferred stocks, which enjoy a good investment rating, are not disturbed.

If the various Federal and state commissions would, wherever practicable, permit write-offs to be effected by restating capital stock value (together with reduction in earned surplus where necessary, and/or a capital contribution by the holding company) the results would not be too serious for public holders of the company's securities. In some cases the holding company also would not suffer (except where restrictions are placed on the declaration of common dividends) or subordination of senior securities is required since its "contribution" is of no practical significance when it owns the entire capital stock. These readjustments have in the past been made in a number of cases by the SEC, particularly in the case of certain southern subsidiaries of Commonwealth & Southern. In other cases, such as Florida Power & Light, the SEC program has proved too severe for a compromise, and important financing programs have been upset.

WHILE many operating companies may encounter legal difficulties (due to state laws or other requirements) in writing down the par value or stated value of their stocks, nevertheless this is the easiest method of adjusting write-offs and one which the Federal commissions should make every effort to permit.



However, there are indications in both the Niagara and Carolina cases that Washington is reluctant to permit adjustment through *capital* surplus. Commissioner Robert O'Brien dissented in the Carolina case to the effect that preferred rights change when the standard is lowered by a cut in stated value, thereby offending § 7(e).

But both stocks of Carolina Power & Light have no par value. Wall Street analysts in considering balance sheet values combine the par or stated value of a stock with the earned surplus in arriving at a per share figure reflecting the amount of asset value back of the stock. The growing use of "no par" stock reflects this accounting philosophy. Market values of many utility stocks have deteriorated far below the old-fashioned New England financial standards, when $100 par even for common stocks was considered the ideal. At the present time relatively few utility companies, other than American Telephone and Telegraph, could issue common stock for public offering at $100 a share or even (in very many cases) at the stated par value or book value. A realistic point of view is particularly desirable, with the stress of war-time taxation and other unfavorable factors which bear heavily on utility finance.

Chicago Transit Companies

THE principal transit companies in Chicago have long been awaiting reorganization. The city has no important subway properties but has extensive surface, elevated, and interurban transit properties. Chicago Railways Company operates the surface lines, and Chicago Rapid Transit most of the elevated and suburban lines. Two independent suburban lines, Chicago, Aurora & Elgin and Chicago, North Shore & Milwaukee, operate their trains over the company's tracks on a rental basis. All these companies are in receivership, and (except for the latter two) will be merged under present plans.

Chicago Railways Company operates some 600 miles of trolley tracks and 117 miles of busses (about one-half of which are trolley busses). The company has been in receivership since 1927 when the various bond issues, totaling nearly $81,000,000, came due. Several smaller surface lines, controlled by Chicago City & Connecting Railway's collateral trust, are operated along with the railway company's properties by the Chicago Surface Lines Joint Board of Operation. In accordance with a Federal court order and a municipal unification ordinance, earnings of joint operations are split according to an agreed percentage basis.

A traction unification ordinance was enacted last year but still has to be ratified by the Illinois Commerce Commission. This ordinance requires a merger of the surface and elevated lines and would also include the city-owned subway and possibly Chicago Motor Coach Company. The new company would be named Chicago Transit Company and would issue $72,718,350 first A 5s, $7,002,290 first income B 5s, 987,286 shares of preferred stock, and 1,342,760 shares of common (plus any securities required for public sale to modernize the system).

THE approximate exchange terms for the principal bond issues of the surface and elevated lines are indicated in the accompanying table. The securities involved in the merger appear to be selling at a total market value in the neighborhood of $45,000,000, to which could be added about $3,000,000 for the two suburban properties (Aurora and North Shore) not included in the reorganization. This seems a relatively modest price for these important traction properties, as compared with the heavy market valuation placed on New York's transit properties.

Moreover, the Chicago Surface Lines enjoy an 8-cent fare, compared with the 5-cent fare in New York, and the elevated lines have enjoyed a 10-cent cash fare since 1920. (Weekly "passes" are sold at reduced rates, however.) A fur-

ther increase in elevated fares from 12 to 15 cents was proposed by the trustees, but this is involved in litigation and is not yet in effect. The transfer system, however, appears to be more liberal than in New York city.

Chicago Surface Lines in the fiscal year ended January 31, 1942, earned after expenses and taxes about $2,500,000 out of gross revenues amounting to over $48,000,000. Chicago Rapid Transit (elevated system) in the calendar year 1941 reported only $683,000 net after expenses and taxes. Interest requirements on the proposed new Chicago Transit first mortgage bonds would be about $3,600,000. Combined net earnings available for interest would thus apparently be in the neighborhood of $3,200,000, which might be increased by a cut in the city's "compensation fund," together with operating savings due to the merger of the surface and elevated lines. However, it is difficult to see how there would be much surplus over and above interest requirements on the new first mortgage bonds, and interest payments on the B income 5s would therefore seem problematical. Of course 1942 earnings have doubtless improved as a result of the war, but this is merely a temporary gain. In former years, earnings were considerably higher than in 1940-41, and possibly the plan had its inception in the period 1936-38 when net earnings averaged about double the 1941 level. Judging from present quotations on the old securities, the new "A" bonds might, it

PRINCIPAL CHICAGO TRANSIT SECURITIES

	Amount Outst. (Mill.)	*Per Cent of Par Value Paid Off*	*Recent Price About*	*Reorganization Plan Approx. Exchange Terms**
Surface Lines				
Chicago Rys. Co. 1st 5/27	$41.7**	25%	52	$750 new 1st "A" 5s
Chicago Rys. Co. Cons. A 5/27	15.7	..	8	19.5 shs. pfd., 7 common
Chicago Rys. Co. B 5/27	16.9	..	1	1.9 shs. pfd., 19.5 common
Chicago Rys. Co. P. M. 5/27	4.0	..	..	
Chicago Rys. Co., Inc. 4/27	2.4	..	..	
Chicago City & Connecting Rys. coll. 5/27	20.6	..	5	11.5 shs. pfd., 15.3 common
Calumet & Southern Chicago first 5/27	3.3**	35	53	$650 1st "A" 5s
Chicago City Railway first 5/27	27.6**	15	52	$850 first "A" 5s
Elevated Lines				
Metropolitan West Side Elevated 1st 4/38	10.0	..	8	$150 first "B" 5s, 8.5 shs. pfd., 6.1 common
Metropolitan Term. 4/38	4.4	..	7	$150 first "B" 5s, 8.5 shs. pfd., 6.1 common
Northwestern Elevated first 5/41	9.4	..	9	$220 Inc. "B" 5s, 7.8 shs. pfd., 7.5 common
Union Elevated first 5/45	3.8	..	10	$220 Inc. "B" 5s, 7.8 shs. pfd., 7.4 common
†Chicago Junction first 4/45	2.3	..	103	Chic. Rapid Transit seeks disaffirm lease.
Chicago Rapid Transit ref. 6/53	8.0	..	6	$100 first "B" 5s, 6.0 shs. pfd., 19.3 common
Chicago Rapid Transit ref. 6½/44	10.3	..	6	$100 first "B" 5s, 6.8 shs. pfd., 20.1 common
Chicago Rapid Transit deb. 1963	18.6	..	½	Omitted in plan.

*For new securities of Chicago Surface Lines—plan operative July 1, 1942 (if approved).
**After payment against principal.
†Pays regular interest. Guaranteed principal and interest by Chicago Stockyards (Me.), not an obligation of Chicago Rapid Transit, though latter assumed lease.

is estimated, have a future market value in the neighborhood of 52, while the "B" incomes might sell around 15-25, and the preferred and common stocks at nominal levels around 3-4 and 1, respectively.

The traction unification plan is still being examined by the Illinois Commerce Commission and hearings are proceeding before Federal Judge Igoe for the bondholders' committees representing the surface and elevated lines.

Judge Igoe has authorized the payment of the August coupons on the various first mortgage bonds of the surface lines. Varying amounts of principal were paid off some years ago on these issues, which explains the proportion of new bonds allotted. Market quotations are on a "percentage" basis.

The New Edition of "Financial Statistics"

THE public utilities division of the SEC recently published its annual edition of "Financial Statistics for Electric and Gas subsidiaries of Registered Public Utility Holding Companies, 1930-1941." This year's edition has a new format and consists of 420 pages of tables and charts compared with last year's 218.

The increased size is due to the insertion of additional charts, the data for each operating company taking up two pages instead of one (there being no change in the statistics and ratios except for the addition of 1941 figures).

Previous editions gave one chart for each company relating to net income after depreciation (as reported to stockholders and as reported for income tax) together with preferred dividend payments and requirements. The new charts include (1) total operating revenues for the 11-year period, showing its disposal in expenses, taxes, depreciation, fixed charges, preferred dividend requirements, and amount available for common (it is unfortunate that 1942 could not be included); (2) a comparison of various 1941 ratios for the individual company with an average of 210 companies; and (3) a "pie" chart showing details of capitalization and surplus.

While no table is presented for the combined figures the average ratios for the 210 companies (as indicated in the charts) are as follows:

Times funded debt interest earned, 1941	2.87 per cent
Times fixed charges and preferred dividends earned	1.70 " "
Return on common stock	9.78 " "
Per cent gross income of capital and surplus	5.72 " "
Per cent depreciation reserve of property	13.64 " "
Per cent depreciation of operating revenue	10.27 " "
Per cent depreciation of property	2.08 " "
Per cent taxes of operating revenues	18.19 " "
Funded debt average interest rate	4.00 " "
Preferred stock average dividend rate	5.85 " "
Per cent funded debt of net property	51.70 " "
Per cent capital and surplus of property and investment	89.38 " "

This is apparently the first time these compiled ratios have appeared in print. It is interesting to note that the funded debt ratio to net property account, at 51.70 per cent, is fairly close to the commission's theoretical ideal of 50 per cent.

It would add to the value of the report if the combined figures for all companies (which the commission must have in its working figures) were made available on an extra page together with charts, even though the averages are not entirely representative of the industry, since they exclude the "independent" operating companies.

The last ratio, per cent capital and surplus of property and investment, would seem to have little financial significance, but the others are all of interest to students of the industry. A welcome addition would be ratio of combined maintenance and depreciation to revenues.

It would be interesting to have a further analysis of the item "return on common stock" since the figure 9.78 seems very high for 1941.

What Others Think

Independent Telephone Companies Espouse Station-to-station Theory

More than forty independent telephone companies associated with the Gary interests have filed with the Federal Communications Commission in two pending cases a brief and "statement of position" which favor a distribution of revenues from telephone toll service recognizing that costs incurred by all carriers participating in such service should be calculated on a station-to-station basis. The two cases in question are the recently announced FCC order directing the AT&T Long Lines Department to show cause why interstate long-distance rates should not be reduced and the so-called "toll line separation case," Docket No. 6328. This statement points out that technical advances in the art of long-distance telephony have reduced and will continue to reduce toll line costs and rates, but that a contrary situation exists with respect to exchange operating costs, the trend of which is upward. The statement adds:

> Terminal costs do not, therefore, follow the trend of toll line-haul costs, but tend to increase rather than to decrease proportionately with toll costs. Any procedure, therefore, which would reduce the terminal compensation proportionately with toll rate reductions has the inevitable effect of unduly penalizing the exchange subscribers of terminals, since such losses must be made up somewhere if the terminal exchange is to continue to render service, and since in the case of the usual independent company such costs and losses can only be made up out of its exchange revenues.
>
> Continuance of terminal exchange compensation on a board-to-board basis (as presently handled in interchanged traffic agreements) necessarily has the same effect of penalizing the exchange subscriber. The independent connecting companies should therefore seek recognition of, and obtain payment for, their (exchange) costs of handling toll terminal business upon a basis more fully compensatory of their costs—*i.e.*, on the station-to-station basis.

The costs to the terminal company of handling the exchange portion of interstate toll business are said to be in every respect "expenses" just as wages of operators and maintenance cost. Therefore any contractual arrangement between the toll and the terminal companies which failed to recognize that the latter are entitled to recover their toll terminal costs is not only unjust to the terminal company but places an undue burden upon exchange subscribers. The independent company group's statement develops this point:

> The sound relationship between the toll line-haul carrier and the toll terminal company must be based upon the proposition that the latter shall fully recover its necessary and reasonable costs of handling the toll terminal business, plus a reasonable return or profit. The fundamental consideration is the right to and the recovery of its proper costs by the terminal company. The use of the board-to-board or the station-to-station bases, respectively, might affect the amount of such costs to be thus recovered, but cannot affect the principle that they should be recovered as a matter of right.
>
> Since the over-all toll rate schedules are now of necessity made by the Bell companies, and fundamentally and necessarily based primarily upon Bell company operating results, and since under existing procedure the independent connecting companies have had no real part in developing and setting up such schedules, any machinery for handling the compensation for terminal costs in connection with toll interchanged business other than by treating such costs as expenses of the over-all toll operation is illogical and unworkable under present procedures. Any other consideration of such costs would result in great complexities and in a multiplicity of administrative details in respect to the bases upon which the toll rate structure is to be erected, or on which the proper levels of toll rates are to be judged.

The brief goes on to say that the sound solution of the entire situation would seem to be the adoption of the

following program: (1) continuation of existing machinery for developing over-all toll rate structure; (2) recognition of the independent connecting carrier terminal expense as a proper charge to the over-all toll operation; (3) a statement of and compensation for toll terminal costs upon the station-to-station basis "since on no other basis can the terminal connecting carrier be properly compensated for its terminal cost on interchange business."

It is observed that the costs of toll line-haul carriage on the longer, more heavily loaded, and more technically developed toll lines of the Bell system are relatively lower than the costs of independent connecting companies on their shorter and less developed lines. Net result is that "prorate" payments to connecting companies which are based solely on mileage hauls do not adequately compensate the connecting companies for their portion of the line haul on business interchanged with Bell companies. It follows that reductions in toll rates which do not take this basic fact into consideration make such mileage prorates more inadequate to the connecting companies. The independent group's statement of position concludes:

> Finally, should the above considerations and conclusions prevail, the independent terminal companies should bend every effort to persuade the regulatory authorities that the recognition of the station-to-station principle must be upon a completely uniform basis by all regulatory bodies, both state and Federal, if injustice and confusion are to be avoided. Indeed, it is of prime importance, and is fundamental in this situation, that such uniformity of treatment be determined and defined in *advance of the change-over* (even by legislation if necessary), in order that the carriers involved in toll interchange operations may thus be relieved of the very real hazard of financial penalties during an otherwise long change-over period.

The statement also conceded that terminal companies should assist in development of "short-cut" methods of determining fair terminal cost and compensation therefor, in order to avoid expensive and elaborate "separation studies" which are burdensome on all parties, including the public.

—F. X. W.

Manufacturers Discuss Programs for War and Peace

The War Congress of American Industry, under the auspices of the National Association of Manufacturers, last month adopted the following war program at its sessions held in New York:

> Victory in battle can come for our fighting men if all of us at home make the job of winning the war overshadow everything else. In the field of industry this means that we must produce and produce and produce. Production alone cannot win the war, but the war cannot be won without production. In time of war it is the job of government to see to it that the nation's resources are mobilized for all-out war production and to determine what food, munitions, and supplies must be produced. It is the job of agriculture and of industry—both management and labor—to produce these goods. Government, management, and labor each has definite opportunities and responsibilities to work for increased war production.
>
> In order to increase the production of food, munitions, and supplies these things should be done:
>
> *By management:*
>
> Management should, with complete disregard for possible post-war consequences, continue all necessary conversion of industrial plants for war production.
>
> It should intensify its research for new and improved weapons of war.
>
> It should intensify its research for substitute materials that will increase war production.
>
> It should intensify its efforts for the most effective use of all available labor.
>
> It should make available to government skilled executives who are not more essential to war production in industry itself.
>
> It should help solve the nation's transpor-

tation problem by handling all shipments as smoothly and speedily as possible.

It should make every effort to lower war-production costs and to eliminate waste and red tape in its own operations.

In short, management should direct the full force of its initiative, resourcefulness, and organizing ability to production of the goods needed to win the war.

By labor:

Labor should stop all strikes and boycotts.

It should end jurisdictional disputes between rival unions.

It should end all "slowdowns" and all restrictions on the output of war goods.

It should stop unnecessary absences from work.

It should stop organizing activities which restrict production.

It should end the practice of making workers pay fees before being permitted to work in American war plants.

In short, labor should direct the full force of its skill, energy, and resourcefulness to production of the goods needed to win the war.

By government:

The government should recognize and support the responsibility and authority of management in planning and carrying out production.

It should protect every individual loyal to the cause of the United Nations in his right to work.

It should stop imposing on workers and industry the closed shop or any other form of compulsory union membership.

It should forbid and punish all picketing designed to prevent employees from making war goods.

It should recognize that, with an approaching shortage of man power, it will be necessary to lengthen the average work week in order to get maximum production.

It should aid farmers and food processors to secure sufficient competent workers and thus help to produce an adequate food supply for both the armed forces and the civilian population.

It should make all orders, directives, and regulations simple, concise, and understandable and should apply them uniformly to all similarly situated.

It should make every effort to lower all government costs and to eliminate waste and red tape in its operations.

It should reduce to a minimum all questionnaires, reports, and appearances before boards, commissions, and agencies.

It should reject all proposals which seek to use the war as a cloak for socializing the nation.

In short, the government, in its coördination of the total war effort, should promptly remove every burden and restriction which now hampers or prevents management and labor from making all the goods needed to win the war.

Progress can follow victory

The War Congress of American Industry does not believe that a disastrous post-war depression is unavoidable or that fundamental changes in our social order are inevitable.

It does believe that a new era of opportunity and progress can be ahead for the United States when the war is won. It believes that the same initiative, ingenuity, and resourcefulness with which Americans have faced the challenge of the Axis must be used to face the problems of the post-war years.

When peace comes, industry can serve the public best if war-time controls are removed, and if free competition is again restored.

Free competition, in all the years before the war, spurred industry to produce new and better goods at decreasing prices and gave the American people the widest opportunity to choose what they wanted to buy and the prices they were willing to pay.

Free competition, throughout these years, developed among American industrial executives and workers the initiative, ingenuity, and resourcefulness which is making possible industry's outstanding record in war production today.

Free competition, when the war is over, must be restored so that factories will switch from war production to the production of civilian goods with the same speed and enthusiasm that was shown in meeting the challenge of war, and so that industry can move again in the direction of providing higher living standards for the American people and a new American prosperity.

Industry's post-war goals

These are the goals the Congress of American Industry seeks for the United States and its people in the post-war period:

1. Preservation of the Constitution of the United States and the rights, freedoms, and opportunities which it guarantees.

2. Opportunity for all in America to gain true security with self-respect through their own ability and effort, and the right to receive wages, salaries, and profits commensurate with their performance and usefulness to society.

3. A prosperous and self-reliant agriculture.

4. Steady employment in free, private enterprise for all who are able and willing to work.

5. A chance for people to save, and an incentive to put their saving to work in private shops and businesses.

6. A progressively higher standard of living for the American people.

Industry's pledge

For America these are days of bitter sacrifice. Not one of us will want to shirk the duties and responsibilities imposed by the war, because we realize how disastrous defeat would be.

Let us Americans, then, pledge ourselves to complete and absolute victory. To victory in war and to victory in peace. And in calling on Americans to take this pledge the Congress of American Industry takes a further pledge of its own.

The Congress of American Industry pledges all the skill and resourcefulness of industrial management to production for victory, to the end that no fighting man or civilian of the United Nations shall lose his life for lack of weapons or supplies.

The Congress of American Industry further pledges that when, with God's help, the United Nations are victorious industry will be ready to turn its skill and resourcefulness to the works of peace, to new wonders of production and plenty, which will provide employment for returning soldiers and sailors and all others and enable the American people to resume their historic upward march, spiritually and materially, as free men.

DR. Ralph Robey, economist, at the concluding session of the congress, told the industrialists that there would be no need for governmental pump priming after the war, and the task of economic rehabilitation would be performed by private enterprise if only government permits the system to function without unnecessary artificial restraints.

He cited in support of his contention the enormous purchasing power that will be in the hands of the public at the conclusion of the war, the demand that will exist for goods, industry's productive capacity to turn out the goods, and an adequate labor force to use the productive facilities.

Preceding Dr. Robey, however, Harley L. Lutz, professor of public finance at Princeton University, declared that private enterprise would have to fight hard to retain its position, pointing out that "the enemies of the enterprise system have been able to establish by political methods a series of restraints which amount to strangleholds upon business and which effectively prevent the enterprise system from reasserting its traditional vigor."

"Tax progression," Professor Lutz said, was "the most potent of all weapons for the destruction of private property and private initiative and for the introduction of the socialist state." He warned that "the enemies of a free society are fully aware of the advantage they now hold" with the heavy taxes imposed upon industry, and that "they will resort to every kind of trick, stratagem, and artifice to prevent relaxation."

Professor Lutz said that under the present method of war financing—"methods which are largely the result of a stupid and shortsighted Treasury opposition to the kinds of taxation which should be used"—there was every prospect of a public debt so large as to result eventually "in some form of repudiation."

He warned that "plans are now under way for a sweeping reconstruction of the economy in the name of the war need," involving industrial concentration, which will wipe out thousands of small businesses, and which will eventually break up accustomed channels of distribution by eliminating thousands of retailers and small distributors. Professor Lutz predicted that this will have devastating effects upon the post-war economy, and said it was his conviction that much of it would not seem to be necessary, even now, if the enormous wastes of the war effort and management could be eliminated.

THE hope of the system of private enterprise lies in the most rapid possible reconversion to a peace economy after the war, Professor Lutz said, fearing, however, that the government's policies of taxation, concentration, and ruthless elimination of so large a part of the economic circulatory system will all coöperate to delay and impede the process.

Dr. Robey pointed out that by the end of 1943 the American public will have the greatest accumulation of unused buying power in history, consisting of $24,000,000,000 in war bonds, $8,000,000,000 in potential instalment credit, and a total of $134,000,000,000 in cash and credit available for spending by corpora-

"WILLIE AND I WERE PLAYING CONDUCTOR AND MOTORMAN, AND I PUNCHED ALL THE TICKETS WHILE HE GAVE OUT TRANSFERS"

tions and the individuals as the owners may desire.

There will also be no limit to the amount of goods the public will want to purchase in the post-war period with its accumulated buying power, Dr. Robey said. In consumers' durable goods by the end of 1943, he said, the deferred demand will amount to almost $12,000,000,000; in business and construction and equipment, $3,000,000,000; for deferred maintenance, another $2,800,000,000; for public works and maintenance, $2,600,000,000; and for consumers' nondurable goods, still another $2,500,000,000—a total of $22,500,000,000.

There will be a deferred demand for 10,000,000 automobiles, Dr. Robey added, for 1,000,000 private houses, for 20,000,000 radios.

This great mass of deferred demands, he argued, will offer a vast opportunity for the revival of trade and industry, assuming they are not interfered with.

H. W. Prentis, Jr., chairman of the executive committee of the National Association of Manufacturers, asserted that Americans are "playing with dynamite when they talk about centralized government being necessary because of changes in the modern world."

Commenting on the "childlike faith" some people in recent decades have put in government, Mr. Prentis maintained that "it is not government that has

wrought the miracle that is being accomplished today in the production of war materials but the initiative, ingenuity, and organizing genius of private enterprise."

Dr. Ruth Alexander, economist, declared that the American people in their overwhelming majority were opposed to Communism, Socialism, Fascism, or any other form of collectivism, and expressed confidence that they will support a program of economic reconstruction after the war on the basis of free enterprise.

SPEAKING on post-war planning by corporations, D. C. Prince, vice president of the General Electric Company, discussed the problems of adjusting themselves from a war to a peace economy. He discussed the need for careful preparation on the basis of need and the purchasing power of the public to avoid an explosive boom with explosive consequences. Mr. Prince said:

> The basic demand of the people for freedom from fear and want will drive them into the arms of the group they think most able to provide those freedoms. Private industry on past performance can give better assurance than any other instrumentality. Plans in that direction are going ahead. They will need the active support of every businessman in order to succeed and, second, to command the confidence of the public.

In another speech, Dr. Robert A. Millikan, chairman of the executive council of the California Institute of Technology, said that human society through "the use of the knowledge we already possess" can organize now to prevent international gangsters from gaining control.

AMERICAN business and industry, in so far as it can be done without detracting from war production, must start now to draft plans for the post-war reconstruction period, Frederick C. Crawford, newly elected president of the National Association of Manufacturers, declared.

In his first speech since his election, Mr. Crawford, speaking at a luncheon in his honor at the Union League Club, New York, contended that any successful plan for post-war rehabilitation must be based primarily on private enterprise rather than on a system of world-wide "government paternalism." He said:

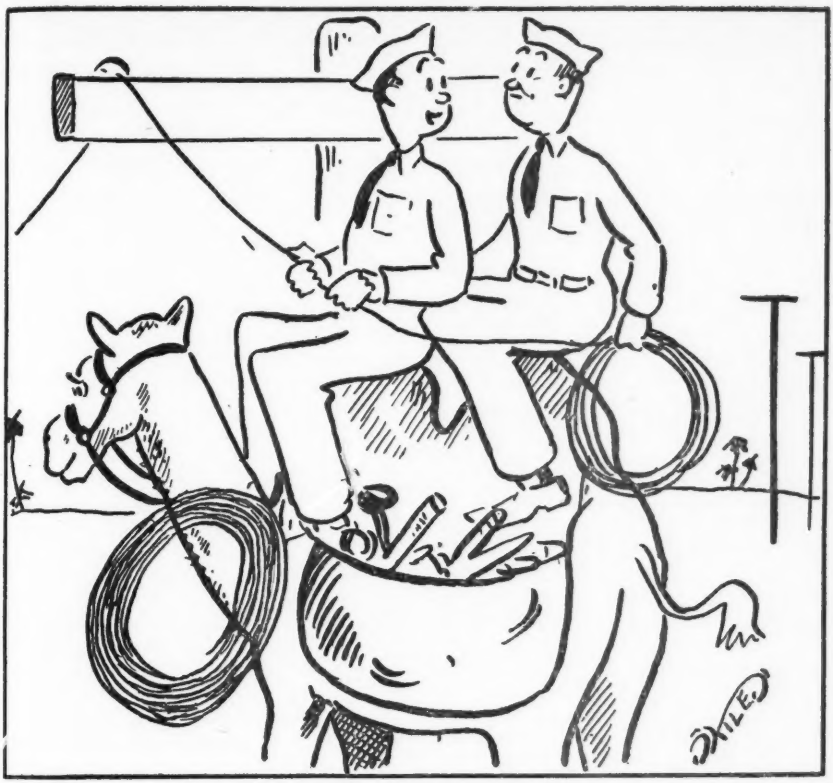
> Post-war reconstruction is going to be an expensive job both here and abroad. Physical destruction must be repaired. War industries must be turned to more productive uses. American industry and the productivity of all other nations once again must be concerned with the primary task of creating better living standards.
>
> Government, having no money of its own, can supply the capital needed for this tremendous reconstruction job only by a crushing tax burden which will impoverish our people.
>
> Despite the altruism of the American people I do not believe they will allow themselves to be thus impoverished. Especially so when private capital can do the job to the benefit of those in foreign lands and with profit, through prosperity, to every American citizen.

Assailing "socialistic plans based on deficit planning" which, he held, were being sponsored in some Federal government circles, Mr. Crawford demanded that industry and business be assured the right to "coöperate fully" in all post-war planning so that the most effective method of winning a permanent peace could be determined.

HE also held that during the war American industry, which has been turning out the matériel of war at ever-increasing capacities, must also retain its "American right" of "constructive criticism" without being assailed as "enemies" to the democratic cause. He stated:

> We in industry have a grim determination to produce to win the war. But while we are coöperating in the winning of the war we will continue to exercise our right to constructive criticism.
>
> Recently an attitude has crept into the country that if groups honestly differ with certain circles they are classified as "enemies" of the country. To criticize, to criticize constructively, and yet be able to coöperate fully at the same time, is real Americanism.
>
> Let's begin the good neighbor policy at home. Let's all coöperate to work together but retain the right to criticize constructively.

Outlining what he termed was "management's responsibility," Mr. Crawford



"I'M GOING TO TAKE THIS CRITTER WITH ME WHEN I GO BACK TO MY OLD JOB WITH THE POWER COMPANY, NO MORE POLE CLIMBING FOR ME"

called for an "international concept of economics" and held that management must become world traders "just as our politicians have to become world statesmen."

"These United States must either accept that world position politically, socially, commercially, and militarily or break faith with those who valiantly lead us to victory," he said.

He advanced four "convictions" which, he held, must influence any post-war planning. These suggestions follow:

> First of all, I believe we must start planning for the post-war period right now, to the fullest extent possible, without detracting from the war effort. We can't wait for an economic Pearl Harbor.
>
> Second, the United States must play a more prominent part among the nations of the world in guaranteeing that there would not be another holocaust twenty-five years hence. If this means big-nation policing, I am for it, despite the economic burden it will require to maintain an international police force.
>
> Third, I believe that this nation must participate, as well, in the economic rehabilitation of our sister nations after the war is over. This, however, is not a policing job to be done by government, but an opportunity and a job for private capital and American industry.

Earlier in his speech Mr. Crawford, in stressing the need for complete coöperation throughout the nation on the war program, said that industry was coöperating with labor unions on the com-

mon objective of increased production.

"We have not coöperated, however, nor will we coöperate with labor in encouraging the present trend toward compulsory unionism expressed in current policies of the War Labor Board," he said.

WILLIAM B. Warner, past president of the Union League Club and president of McCall's Corporation, in introducing Mr. Crawford, bitterly assailed the Federal government for its "inefficient government, its overlapping of authority, and its avoidance of decisions," and contended that the American people were "getting tired of this performance" and were turning more and more to the businessmen for guidance.

Mechanical Engineers Consider Emergency Problems

AMERICAN railroads were advised recently by Paul V. McNutt, War Manpower Director, to help solve their man-power problems by employing more women, Negroes, elderly persons, and part-time workers. In an address before the American Society of Mechanical Engineers at New York, Mr. McNutt appealed for changed hiring practices, warning the railroad executives present that their men will continue to be withdrawn for the armed services.

Mr. McNutt estimated that 3,000,000 more workers will be drawn into war industry in addition to the 4,000,000 now engaged in war production. He emphasized the need of tapping new sources of man power and developing improved training programs, and at the same time urged railroad employers to avail themselves of the United States Employment Service in filling their labor needs.

Two years ago, Mr. McNutt told members of the society's railroad division, there were fewer than 500,000 women in war production; today there are nearly 4,000,000 and by the end of next year, he predicted, there will be 6,000,000. Moreover, experience in England demonstrated that women could perform 80 per cent of all war jobs.

"This matter of using women," Mr. McNutt said, "is one which the railroads should recognize bluntly and act upon now. Proportionately, the railroads do not hire enough women—only about 3 per cent of your employees are women as contrasted to some 21 per cent in air transport."

MR. McNutt said there were many railroad offices which still insisted on male stenographers, male telegraphers, and male operators of machines "entirely within the physical capabilities of women workers." Citing the Pennsylvania Railroad as one line which had shaken off old prejudices and taken the lead in hiring women, he urged other railroads to follow that lead.

Mr. McNutt said that prejudice and discrimination which limited the use of Negroes "must go down." Urging railroad management and railroad labor to reëxamine the hiring practices and the employment traditions of their industry, he said:

> Were the employment practices of many railroads to be applied to American industry as a whole, millions of American Negroes, instead of turning out ships, shells, and planes and guns America needs for victory, would be immobilized for the duration of the war.

F. K. Mitchell, assistant general superintendent of motive power and rolling stock of the New York Central System, told the railroad division the ranks of apprentices had been hardest hit by Selective Service. He urged that "properly constituted committees" decide what the ratio of apprentices to mechanics should be and then make deferments to maintain that ratio.

WHAT OTHERS THINK

Foods now being shipped to American armed forces and the Allies occupy only one-sixth of the cargo space required a year ago, Colonel James L. Walsh, chairman of the society's war production committee, reported.

Speaking on "logistics, the Science of Survival," Colonel Walsh explained the marked advance in food shipping to improved dehydration, particularly noticeable in the reduction of beef, potatoes, peas, and carrots. Other noteworthy economies were being effected, he said.

Colonel Walsh said that the definition of logistics should be changed with respect to the purposes of the present war. "It is no longer only that branch of the military art which embraces the details of the transport, quartering, and supply of troops in military operations," he said. "Today logistics is the science of maintaining the existence of nations."

WITH further research and improvements in the development of synthetic rubber, E. G. Kimmich, of the Goodyear Tire & Rubber Company, told the society, natural rubber "with all its remarkable characteristics" will be forced into a secondary position after the war. "For many uses," Mr. Kimmich said, "natural rubber can never regain its former position. This applies particularly to the oil-resisting synthetics, some of which warrant the designation as 'oil-proof' materials."

W. B. Poor, supervising engineer of the United Gas Pipe Line Company, of Shreveport, Louisiana, told how engineers and construction crews surmounted unusual obstacles in the construction of a 200-mile gas fuel line from Lirette, Louisiana, to Mobile, Alabama. The pipe line had to cross the Mississippi river, Lake Pontchartrain, 25.5 miles wide at the crossing point, and traverse reclaimed marshes and heavily timbered swamps. Despite unfavorable weather and the difficulty of the terrain the line was completed and placed in service on schedule.

Notes on Recent Publications

AMERICAN RAILROADS IN WAR TIME. By Thor Hultgren. *Political Science Quarterly*. September, 1942.

AMERICAN STANDARD DEFINITIONS OF ELECTRICAL TERMS. The American Institute of Electrical Engineers, 33 West 39th Street, New York, N. Y. Pp. 311. Price $1.

A new American Standard known as Definitions of Electrical Terms, C42, sponsored by the American Institute of Electrical Engineers, is now ready for general distribution.

The issue of this volume of electrical definitions as an American Standard should mark an epoch in the literature of the electrical art in America, as it is the first time the definitions of the important terms common to all branches of the art as well as those specifically related to each of the various branches have been assembled and printed under one cover.

This glossary is the result of more than twelve years' work of a sectional committee of 46 members having 18 subcommittees drawn from available specialists. More than 300 individuals have given material assistance and many others have assisted in specific instances. The 34 organizations represented on this sectional committee include the national engineering, scientific, and professional societies, trade associations, government departments, and miscellaneous groups.

THE BOULDER CANYON PROJECT: HISTORICAL AND ECONOMIC ASPECTS. By Paul L. Kleinsorge. Stanford University Press, Stanford University, California. 1941. Pp. xiv, 330. Price $3.50.

THE FINANCIAL POLICY OF CORPORATIONS. By Arthur Stone Dewing. The Ronald Press Company, New York. Fourth edition. 1941. Pp. 1,500. Price $10.

This exhaustive study of corporation finance first appeared in 1919, but it has been completely rewritten and reorganized to meet present-day developments. It takes into account the trends toward greater recognition of stockholders' rights; it discusses the new responsibilities imposed on financial management by regulations of administrative bodies, such as the Securities and Exchange Commission; and it interprets the law as laid down by the courts, particularly with respect to reorganization, declaration of dividends, and similar important matters.

The March of Events

FPC Enjoined by Court

THE Federal Power Commission on December 7th was enjoined from enforcing its $5,000,000 annual gas rate reduction order against the Panhandle Eastern Pipe Line Company, pending a review of its findings by the eighth Federal Circuit Court of Appeals.

The court set May 14th to hear the case and ordered that the difference between the present rates and those fixed by the commission be impounded. The company supplies gas to Detroit and intermediate consumers in Missouri, Illinois, and Indiana.

In its order, the court ruled that distributing companies had no stake in the impounded fund and that it ultimately will be paid either to the pipe-line company or to the retail gas consumers.

The commission had ordered the pipe-line company to file rates to bring about a reduction of at least $5,094,384 a year below the 1941 consolidated gross operating revenues of $17,789,573.

The company and its two affiliates, Illinois Natural Mutual Gas Company and Michigan Gas Transmission Company, transport and sell natural gas from the Kansas-Oklahoma area to distributing companies.

Participating with the commission in the court fight to support the reduction order is the Detroit Distributing Company, the Michigan Consolidated Gas Company, the city of Detroit, and Wayne county, Michigan.

Asks Natural Gas Pool

THE War Production Board last month asked representatives of eight natural gas pipe-line companies to pool their natural gas resources to alleviate shortages in the Midwest.

W. A. Lyons, chief of the supply allocations section, WPB Power Division, Washington, said the proposal was "received favorably."

Under the plan, which will be considered by a joint committee of the industry at Kansas City, the gas resources of the entire Midwest would be pooled, so that surpluses in one area could be made available to some other area. The proposed pool would be made up of the following companies:

Natural Gas Pipeline Company of America, running from the Amarillo, Texas, fields to the Chicago area.

Chicago District Pipeline Company, which receives its gas supply from the Natural Gas Pipeline Company of America.

Panhandle Eastern Pipe Line Company, which runs from Amarillo fields to Detroit.

Consolidated Gas Utility Company, which operates out of Amarillo field into Oklahoma and Kansas.

Oklahoma Natural Gas Company, which serves Tulsa and other parts of Oklahoma.

Kansas Power & Light Company which serves Kansas.

Northern Natural Gas Company, which runs from Hugoton, Kansas, fields to Minneapolis and St. Paul.

Union Gas Company, operating in Kansas.

WPB spokesmen said the plan—a WPB directive which requires approval of the companies to become operative—had been worked out with the coöperation of other governmental fuel agencies, including the Office of Solid Fuels and the Petroleum Administration for War, with the approval of Army and Navy representatives.

WLB Refuses to Act

THE War Labor Board, recognizing the constitutional guaranty of states' rights, on December 15th decided unanimously it has no power to intervene in labor disputes between states and municipalities or their employees.

The decision—anxiously awaited in many cities—came when the board specifically rejected union requests that it take jurisdiction in controversies involving New York transportation workers and city employees of Newark, New Jersey, and Omaha, Nebraska.

Wayne L. Morse, public member of the board, suggested that in the future it might be advisable for the WLB to offer its good offices to aid in settling controversies of that type, if the disputants so request.

Explaining that labor disputes between local governments and their employees "can be as disruptive to the war effort as disputes in private industry," he said he believed that in the interests of more successful prosecution of the war mutual coöperation and reciprocal use of state and Federal labor relations machinery might be advisable for the duration.

Mayors of the three cities were joined by organizations representing city officials throughout the country in opposing Federal intervention in municipal disputes at a public hearing last month.

Canada Undertakes Vast Power Project

MUNITIONS Minister C. D. Howe said last month that Canada had undertaken somewhere in her vast wilderness a power project—nameless for war reasons—that overshadowed the great Boulder dam development in the United States. Mr. Howe said of the project:

"A similarity of methods was employed and similar results were obtained, but it should be remembered that the Canadian project had to contend with conditions that did not prevail in Arizona, such as extreme cold, snow, ice, and heavy rains.

"The Canadian project also had to contend with a war-time shortage of labor and materials. Double the number of men had to be employed in the Canadian project to rush the work through in time. Men had to be trained for the job and an unusual amount of construction equipment had to be employed to maintain the schedule. At Boulder dam the peak employment was 5,250 men, whereas in Canada the peak employment was 10,140 men.

"The United States government allowed the contractors at Boulder dam seven years to complete the work, although the contract was actually completed in five years. In Canada the somewhat larger project will have been completed within two and one-half years. As a matter of fact, the initial power was being used from the Canadian development within a period of eighteen months from its commencement.

"The installed capacity of Boulder dam, as of a year ago last January, was 975,000 horsepower, whereas the installed capacity of our Canadian development will be 1,020,000 horsepower."

Alabama

Objective Rate Extension

THE Alabama Power Company last month petitioned the state public service commission for permission to extend its "objective" rate to certain rural communities and cities in which it is not in effect. It is estimated that 10,650 rural families will save approximately $52,620 a year under the "objective" rate, and the cities affected about $6,000.

President Thomas W. Martin, of the power company, explaining the reason for asking the extension of the "objective" rate, made the following statement:

"Under the proposed new rural rate, to be known as E-5, approximately 10,650 additional rural customers will enjoy a saving of $52,620 annually. The proposed rate is designed to extend the benefits of existing 'objective' rural rates to those customers who, because of war restrictions on the manufacture and sale of electrical equipment, cannot increase their use of electric service. Issuance of an order by the Alabama Public Service Commission approving the suggested rate will bring to all the company's rural customers the advantages of the objective rate plan.

"Included in the petition is a plea for establishment of a new municipal street lighting rate to be known as F-5. This rate will give to municipalities unable to increase their street lighting because of shortages of critical materials and now billed at the 'objective' street lighting rate, the advantages of this rate and will result in annual savings of approximately $6,000 for the municipalities affected."

The commission was reported to be considering the petition and it was believed favorable action would result.

Labor Controversy Settled

BIRMINGHAM'S threatened shortage of gas was averted early last month with announcement that striking employees of Alabama By-Products Corporation would return to work immediately.

Settlement of the controversy was announced by N. B. Maxwell, regional director of District 50, United Mine Workers of America, following conferences with J. W. Porter, president of the corporation, and came only after several industrial plants had been slowed down and Charles B. Gamble, president of Birmingham Gas Company, had appealed to householders to conserve all the fuel possible.

The men walked out on the 11 p. m. shift December 3rd, charging one of their committeemen had been discharged without due cause. The company said he was let out for insubordination, but would be reinstated.

Arizona

Gas Rate Cuts Ordered

CONTINUING its statewide rate slashing program, the state corporation commission recently ordered an annual reduction of $102,651 in the natural gas bills of Tucson consumers.

It boosted to over $400,000 the amount of savings to state consumers in directives issued by the commission in the last two months.

On November 30th, the Phoenix rates were reduced approximately $300,000. Other orders in the process of preparation for other state cities and towns were expected to run the total to more than a half-million dollars.

In its most recent action, the commission ordered the Tucson Gas, Electric Light & Power Company to place a new schedule into effect "on or before December 15th" or show cause.

The commission also pointed out in the order—a situation which was applicable in the Phoenix reduction—that on October 31st it issued an order to the Phoenix, Tucson, and other state utilities to place into effect all of the reductions granted by the El Paso Natural Gas Company to the various utilities.

In Phoenix the amount ordered passed on as of October 31st was over $132,000 and in Tucson, the commission said, it was $77,791.

The Tucson reduction represented approximately 15 per cent in the monthly gas bills, with the residential bills slashed $88,503 annually.

Reductions totaling $78,000 yearly were subsequently ordered by the commission in natural gas bills in Bisbee, Douglas, Miami, and Globe. The cut, which represented about 15 per cent, was effective with December 1st billings. The reduction in Bisbee totals $26,083; Douglas $22,792; Globe $17,355; and Miami $11,770.

The minimum bill in each city will be $1 a month.

Arkansas

Gas Rate Protested

THE state utilities commission recently took under advisement the Arkansas Smelting Company's rate discrimination complaint against the Twin City Pipe Line Company of Fort Smith following a 3-hour hearing.

The smelting company, a Van Buren subsidiary of the Eagle-Picher Mining & Smelting Company, charged that its natural gas rates were proportionately higher than other large industries in the Fort Smith area, particularly the Harding Glass Company.

Supporting its claim for a reduction below its present rate of 12 cents per thousand cubic feet, the smelting company cited a tremendous increase in consumption and round-the-clock operations.

Waterworks Tax May Be Sought

RECENT discussions among city officials concerning an expected sharp decline in revenues for 1943 were said to make it appear probable the city of Little Rock would again, as it did in 1941, ask the Municipal Waterworks Commission to pay a $25,000 per year privilege tax levied against the waterworks in 1939.

The commission, which has functioned since the city bought the properties of the Arkansas Water Company in 1936, refused to pay more than $12,000 a year to the city, the privilege tax charged the company at that time.

Soon after he came into office in April, 1941, Mayor Moyer pressed for collection of the full tax and also a one-third reduction in the charges by the commission against the city for hydrant rentals and meter reading. In July, 1941, Chairman W. H. Williams of the commission informed the mayor it would do neither. The attitude of some city officials appeared to be the privilege tax assessed against the waterworks is as valid as a $25,000 tax levied against the Arkansas Louisiana Gas Company and the Southwestern Bell Telephone Company and a $26,000 tax against the Arkansas Power & Light Company.

Ordinances passed in June, 1939, raised the privilege taxes of the waterworks, the power company and gas company, and several other firms. The commission alone has continued to pay the old rate and apparently believes the $12,000 itself is more a "gift" than a tax.

California

PG&E Project Passed

FINAL authorization for the Pacific Gas and Electric Company to complete development of a $25,000,000 electric power project on the Pit river at Bush Bar came from the state railroad commission on December 1st.

Immediate completion of the project, with actual generation of power scheduled for late 1943, is designed to provide new production capacity for new demands created by war industry.

Policy Change Predicted

REPRESENTATIVE B. W. Gearhart, of Fresno, on December 15th said he confidently expected an announcement before the first of the year calling for the completion of the entire Central Valley Project as a war measure.

Gearhart said all witnesses at an Appropriations Committee hearing last June testified to the necessity for completion of all phases of the great project at the earliest possible moment as part of the war program.

Colorado

Stipulations Submitted

ONE more step in the long procedure for determining fair natural gas rates for Denver and other cities served by the Denver pipe line was taken recently when attorneys for all parties interested in the case, except the city and county of Denver, filed a stipulation with the clerk of the tenth Federal Circuit Court of Appeals detailing the evidence upon which they are willing to rely for a final settlement.

Parties to the stipulation were the Colorado Interstate Gas Company, the Canadian River Gas Company, the Colorado-Wyoming Gas Company, the Public Service Company of Colorado, and the Federal Power Commission, which several months ago ordered sharp reductions in the "gate" rates charged distributing companies located along the Denver pipe line. At the same time attorneys for all interested parties, including the city and county of Denver, filed another stipulation outlining the evidence upon which they will rely in a companion case involving only the gate or wholesale charges made by the Colorado-Wyoming Gas Company, which operates a gas line extending from a point near Denver to Cheyenne, Wyoming.

The city and county of Denver were not parties to the first stipulation because the city has objected to the jurisdiction of the circuit court in the main gas rate case. A copy of the stipulation was served on city officials.

Connecticut

More Regulation Sought

BROADER control over the operation of Connecticut public utility companies in war time was asked by the state public utilities commission in its annual report submitted to Governor Hurley early last month.

The commission recommended that it be given power to prescribe temporary rates of utility services, to regulate rates charged and services furnished by municipally owned utilities in communities outside the limits of the utility, and to order public service companies to continue their services where such continuance is deemed essential to the public good.

For the immediate establishment of these extra powers, the commission recommended that their proposals be submitted to the general assembly as soon as possible after that body convenes on January 6th.

"In view of the national emergency," the report stated, "the commission should be given broad powers to develop public transportation facilities to take care of increasing passenger loads."

The commission asked specifically for power to issue temporary authority without public hearing, and permanent authority after hearing, to potential motor bus or livery operators.

The report also included the recommendation that the commission be given the power through legislative action to "order public service companies to continue supplying service where the commission finds such continuation to be reasonably necessary in the public interest, despite an intention of the company to discontinue operations."

Asking that it be given power to prescribe temporary rates for utility companies and also regulate rates of municipally owned companies, the commission pointed out that at the present time it has no such control and emphasized the advisability for establishing such centralized power.

District of Columbia

To Obey WMC Order

APPROXIMATELY 2,500 Capital Transit employees were told on December 15th that a War Manpower Commission order allowing hiring of Negroes as street car and bus operators would be obeyed by the utility.

The announcement was made by E. D. Merrill, president of the company, after Paul V. McNutt, WMC chief; E. B. McLean, chairman of the President's Committee on Fair Employment Practice; J. G. Bigelow, transit union head; and Sefton Darr, union counsel, all talked to a noisy group of transit employees who objected consistently to all of the proceedings.

The meeting was held at the auditorium of the Department of Commerce.

McNutt told the transit employees that the move was an absolute necessity due to lack of man power.

Mr. McNutt appealed to the operators to act as workers in an essential war industry and accept the order as they would any patriotic measure.

President Merrill's statement simply told

the assembled employees that "the company would conform with the order of the President's Committee on Fair Employment Practice to employ persons solely on the basis of their qualifications without regard to race, creed, color, or national origin."

Illinois

City Pays Electric Bills

THE Princeton city council recently ordered December bills for electricity in the approximate amount of $10,000 stamped "paid" before they were mailed to the customers.

Commissioner A. H. Unholz said there was a "dangerous surplus" in the treasury of the community-owned electric light plant and suggested the "free ride" for the home owners.

Iowa

Gas Plan Voted Down

THE proposal to purchase the Council Bluffs Gas Company for $1,560,000 was defeated December 9th by better than a 3-to-1 vote in a special election. Complete unofficial returns from the 6 wards of the city showed the vote to be 2,378 to 741 against the measure to set up a municipal gas system.

Several weeks ago the company was purchased by John Nuveen, Jr., Chicago, for $1,350,000 but the Securities and Exchange Commission ruled at Philadelphia that the purchase would be contingent upon the Council Bluffs voters' decision in the referendum. Rejection of the proposal by the voters meant that Nuveen's purchase needed only approval of the commission now.

In the last city election the total vote was 7,000 while the city has a registration of 22,000.

Kansas

Buys Two Utilities

TWO Kansas utilities, the McPherson Oil & Gas Development Company, of McPherson, and the Blue River Power Company, of Marysville, have been sold to the Kansas Power & Light Company, of Topeka, D. E. Ackers, president, announced recently.

The sale, approved by the Securities and Exchange Commission, is one of the formal transactions in connection with the provisions of the Federal commission ordering the dissolution of the North American Light & Power Company, a corporation owning the common stocks of many large utilities throughout the Midwest.

Kentucky

Gas Rate Hearing

THE Western Kentucky Gas Company presented its plea to the state public service commission early last month for increased rates and the hearing was recessed until December 29th when consumers would offer their objections at a meeting in Owensboro.

The company, which serves 25 cities and communities in the western part of the state, including Madisonville and Princeton, presented data designed to show it earns less than 1.3 per cent, and asked permission to raise rates enough to bring in 6½ per cent.

The rates sought would increase the average monthly bill of 3,166 consumers 44.4 cents and add about $16,800 to the company's annual revenue, its petition declared.

Rural Customers Billed Twice a Year

RURAL customers of the Kentucky Utilities Company will be billed only twice a year for their electric power consumption under a plan announced recently by Grover C. Jones, division manager. He said the plan was designed to save tires and gasoline of meter readers.

During the intervening months between meter readings customers may read their own meters or accept an "average bill," he said. Adjustments will be made at the semiannual readings by a company representative.

Jones said approximately 2,000 rural meters in Fayette county are served by his company.

Michigan

Power Users Get Rebate

FOR the ninth year the Wyandotte municipal service commission has authorized the issuance of a customers' dividend totaling approximately $55,000.

The electric service customers on the municipal lines as of last September 30th will receive checks in the amount equal to 10 per cent of their net bills for the year beginning October 1, 1941, and ended September 30, 1942, H. E. Allen, superintendent of the department, said.

Since the inauguration of this policy by the commission in 1931, nearly $300,000 has been refunded, Allen added.

Missouri

Purchase Decision Reserved

THE state public service commission recently indicated it would be "after the first of the year" before it ruled on the application of the Sho-Me Power Coöperative of Columbia to buy the 20-county power system of the Missouri Electric Power Company of Springfield.

The Rural Electrification Administration would finance the deal.

Fourteen utility companies opposed the purchase as "the initial step in the purpose of creating in Missouri and Arkansas a vast publicly financed and publicly owned power project to provide duplicative and competitive service in municipalities and territory already adequately served" by utilities.

New Jersey

Drops Rate Increase Plea

THE state board of public utility commissioners announced on December 11th that Elizabethtown Consolidated Gas Company voluntarily had withdrawn its request for permission to increase rates to its 71,000 customers in Elizabeth and 17 near-by municipalities. The increase was intended to boost annual revenue by about $64,000.

The board president, Joseph E. Conlon, said the company reserved the right to renew its application later and "did not admit the relief asked for in the tariff filed in August was not justified, reasonable, and equitable."

Federal anti-inflation legislation and policies discouraging rate increases where not essential to the continuance of service have made the commission hesitant to approve higher tariffs, Mr. Conlon noted. The company, he added, will initiate an economy by having meters read for billing every two months for the duration instead of once a month.

Intangibles Not Taxable

INTANGIBLE personal property of public utilities is not taxable locally, the court of errors and appeals ruled last month. New Jersey's highest court held that intangible assets, such as bonds, accounts receivable, and cash in banks, were exempt from municipal taxation because of the state's franchise and gross receipts taxes against public utilities.

The court's decision, affirming a previous ruling by the state supreme court, directed the Monmouth County Tax Board to dismiss Asbury Park's application to assess intangibles of the Jersey Central Power & Light Company, and the Morris County Tax Board to dismiss a similar application to assess intangibles of the New Jersey Power & Light Company.

The applications covered 1939 and 1940.

New York

Free Rides Voted

A BILL that, if it becomes law, would permit soldiers, sailors, and marines in uniform to ride free on all city-owned and operated transit facilities was passed last month in the New York city council by a vote of 20 to 2, with three members of the council not voting. A similar measure, approved last spring by the legislature, was vetoed by Governor Lehman at the request of Mayor LaGuardia.

Not even the sponsors of the measure which was approved recently hold out much hope for its final enactment into law, since it re-

quires the approval of the board of estimate and the separate concurrence of the mayor. It was also freely admitted in the council that even these approvals might not be enough; it may also require action by the board of transportation, which operates the city's transit facilities.

Councilman Stanley M. Isaacs of Manhattan, in opposing the measure, which was sponsored by Louis Cohen of the Bronx, warned that its enactment would provide a further argument for an increased subway fare.

Water Rights Law Demanded

GOVERNOR Charles Poletti, long an advocate of public control and development of water power resources, on December 11th demanded that Governor-elect Thomas E. Dewey and the incoming Republican legislature act to secure the state's rights in the Niagara Falls power development, following a decision of the court of appeals that such action was within the legislature's powers.

Governor Poletti declared that such action was imperative, and he made certain that the issue would be brought before the legislature by instructing the present Water Power and Control Commission to prepare legislation for submission to the governor and the incoming legislature. Governor Poletti said in part:

"It is imperative that the chief executive and legislature of the state of New York take immediate action to protect the interests of the people in the rich water power resources of the Niagara river. This action has been made imperative by yesterday's decision of the court of appeals in the case of Niagara Falls Power Company.

"As governor, I am directing the Water Power and Control Commission of the state that it commence immediately to prepare legislation to submit to the incoming government and to the legislature which convenes in January.

"This legislation will contain two provisions:

"1. A provision that declares very clearly that the water power of the Niagara Falls belongs to the people of the state and that the Niagara Falls Power Company is merely enjoying a use of it.

"2. An amendment to the Conservation Law so as to give authority to the Water Power and Control Commission to demand that the Niagara Falls Power Company pay a rental on the 15,100 cubic feet per second of water that it has been diverting for decades without paying a cent to the state. The rental that the state is entitled to will amount to $1,500,000 per year. This is a lot of money, which the people are entitled to get at the earliest date. Private utility companies have been using this 15,100 feet per second for fifty years without paying a rental to the state. Figuring only from 1918, it is obvious the state has lost from thirty to forty millions of dollars.

"It must be definitely stated by statute that the people of the state, and not a private utility company, is the owner of these valuable water rights."

The issue, it was said, was one which has had the Republican party on the defensive in the state for many years, although not in the last few years, and the governor's action, following the court decision, had the effect of reviving it.

Transit Union's "Ad" Rejected

THE Transit Workers' Union disclosed recently that when it tried to buy advertising space in subway and elevated cars to publicize its grievances against the New York city board of transportation, the board rejected the advertisement.

Douglas L. MacMahon, president of the New York local, charged that "the refusal of the board of transportation to accept the ad is a violation of freedom of speech and a violation of the principles of equality of treatment to those wishing to purchase advertising space in the city's subway lines."

John H. Delaney, chairman of the board, confirmed the fact that the advertisement had been rejected. It was turned down, he said, because it was "subversive" to the discipline of the transit employees and to the proper and efficient operation of the city transit system.

Ohio

Board Wins Approval

THE Cleveland city council recently confirmed Mayor Frank J. Lausche's appointment of Properties Director William C. Reed Attorney William C. Keough, and former Mayor Edward Blythin as the three members of the independent commission which, on January 1st, would assume full control of the City Transit System.

Approval of Reed's appointment was unanimous, while only two votes were cast against concurring in the selection of Keough and only one against Blythin.

Councilman Anton Vehovec, Democrat, opposed the appointment of both Keough and Blythin on the ground that "the commission should include someone who knows something about engineering instead of a couple of lawyers." Councilman Raymond J. Taylor voted against confirming the appointment of Keough, a former municipal judge, because, he

said, "the third member of the commission should have a knowledge of the transit system comparable to that possessed by Mr. Reed and Mr. Blythin."

Oregon

FPC Orders Disposal of "Write-ups"

THE Federal Power Commission recently announced its order and opinion (No. 84) directing that the Pacific Power & Light Company, Portland, dispose of $9,915,860.48 in "write-ups" and other excess charges classified in the company's electric plant accounts. The determination set the original cost of the company's electric properties at approximately $21,500,000, as of January 1, 1937, which is about 26 per cent less than that claimed in the company's reclassification and original cost studies filed pursuant to provisions of the commission's uniform system of accounts.

The 26 per cent reduction in plant accounts results from revisions made by the company in its original cost study, in line with recommendations contained in a joint report prepared by the staffs of the Federal Power Commission and the public utility commissioner of Oregon, and from write-downs and other adjustments specified by the commission in its recently announced order.

Included in the original cost as determined by the commission were fees totaling $1,034,000 which were permitted to tentatively remain in the plant accounts pending the additional analysis and consideration necessary to eliminate any amounts representing profits to associated companies in the Electric Bond and Share Company group. The opinion stated that it would "seem more practical to examine the books and records of the holding companies and the affiliated service companies and make the necessary adjustments to all public utility subsidiaries of Electric Bond and Share Company at one time, rather than to make the necessary studies and adjustments as each case arises. This procedure will prevent the overlapping of effort and will insure more uniform determinations."

Pennsylvania

Gas Rate Cut Ordered

THE state public utility commission last month settled the 5-year-old Peoples Natural Gas Company Case with an order for a reduction of almost 15 per cent in gas rates and refunds of $3,000,000 to 161,000 consumers in western Pennsylvania.

The commission ordered the company to file within fifteen days a new rate schedule to reduce the cost of gas to residential and commercial consumers by $1,016,323 yearly and to make refunds within sixty days on bills collected in the past four years.

The company's rates were described by the commission as "unreasonable and excessive," and the new rates were prescribed to effect an average reduction of 14.26 per cent on monthly bills of consumers.

The effect of the commission's order was to grant the gas company about 20 per cent of the rate increase it originally requested three years ago and actually put into effect July 1, 1940.

The company was enabled to raise its rates—on a provisional basis—by an order of the state superior court, which overruled a commission decision.

Under the order, the new rates are to be made retroactive to last January 1st, which will require reparations for the year 1942, in addition to the specific reparations ordered for three previous years.

Hits Commission Action

THE three Republican members of the state public utility commission have permitted two service companies to circumvent "the letter and spirit" of the Federal Price Control Act, it was charged recently.

Democratic Commissioner Richard J. Beamish said the Republican majority passed an order agreeing to "abdicate their duty to notify the Office of Price Administration of any proposed increased traffic rates." The order provides for commission acceptance for filing of rate increases if the utility does not believe it is under OPA jurisdiction, he said.

Beamish served notice, however, that he would continue to follow OPA procedure. In a letter to Robert A. Nixon, Wisconsin, head of the OPA Utilities Division, Beamish said the Aronomink Park Heating Company, which received commission approval of tariff increases, had violated OPA procedure because no notice was given the Federal agency. The other violation was by the Gettysburg Water Company, which proposes to raise rates of about seventeen customers with large meters.

Rhode Island

Street-lighting Change Accepted

ON recommendation of the street-lighting investigation committee which has been at work on the matter for more than a year, the Providence city council recently adopted a resolution accepting an offer of the Narragansett Electric Company to cut approximately $10,000 a year from its charges for certain types of street lights used in Providence.

The lights on which the reductions are to be made are arc lights served by underground cables, which are to be cut $7.69 a light a year; arc lights served by overhead wires, on which the cut is to be $5.43 a light a year; and 3-light arc standards which will be reduced $15.83 a standard a year.

The reduction will be retroactive to October 1, 1942. A total of 1,503 arc lights are affected. The resolution directed city officials to carry out the readjustment in rates as soon as possible.

Texas

Gets Normal Gas Supply Again

NATURAL gas supplies returned to nearly normal in the El Paso area after a recent 24-hour curtailment which left several large plants shut down and others restricted. The shortage of natural gas, extending from El Paso through southern New Mexico to Phoenix, Arizona, was described as due in part to breaks in supply mains and in part to excessive demands.

Although service has been restored to more than 200 industrial users and supplies for domestic use brought nearly to normal, J. Y. Wheeler, vice president and general manager of the Texas Cities Gas Company, which distributes the gas in El Paso, urged householders to continue gas conservation so that another shortage might be averted.

When the pressure in gas mains dropped alarmingly the War Production Board ordered industrial gas heating cut off in Phoenix and requested householders in the 3-state area served by the El Paso Natural Gas Company to turn thermostats at a maximum of 50 degrees and shut off water heaters entirely, foregoing baths and family washing.

The low pressure in the mains, according to C. C. Cragin, general manager of El Paso Natural Gas, was caused partly by breaks which have been repaired in a line east of El Paso and one outside of Eunice, New Mexico.

Utility Held Amenable

FRACTIONAL periods of tax-paying quarters are taxable as against public utilities where the tax act carried an emergency clause and was passed by the necessary record two-thirds vote, it was held at Austin last month by the third court of civil appeals when it reversed and rendered judgment in favor of the state against Gulf States Utilities Company from Travis county, which had contended to the contrary. It established a legal precedent in Texas as no case was cited or found carrying decision of the question.

Texas' largest tax act, HB 8 of 1941, increased the gross receipts tax rate on utilities operating in cities above 2,500 population and, for the first time, taxed such receipts in towns of between 1,000 and 2,500 inhabitants. It became effective May 1, 1941, but the utilities contended it did not become operative until the succeeding quarter which, under the law, started on July 1st, to thus absolve them from tax liability in either count for the two months of May and June. Gross receipts taxes are payable quarterly, based on the receipts of the preceding quarter.

Washington

State Cancels Probe

AFTER an agreement between the litigants, Superior Judge John M. Wilson on December 7th dismissed a case involving an investigation of Puget Sound Power & Light Company's records.

The state department of public service in 1940 ordered the investigation for the purpose of "making proper valuations, and for the establishment of fair rates for sale of electric energy at wholesale, to public utility districts and rural coöperative power systems."

On an appeal from the order, Judge Wilson held for the company, and the department gave notice of appeal but went no farther.

Buys Water Utility

LONGVIEW voters approved a water revenue bond issue last month of $900,000 to provide funds for the purchase of the water system of the Washington Gas & Electric Company in Longview. The vote was 527 to 67.

The Latest Utility Rulings

OPA Intervention against Bus Rate Increase Upheld

THE United States Court of Appeals for the District of Columbia has reversed a lower district court judgment which refused to grant the Office of Price Administration an order restraining a bus rate increase. The Washington, Marlboro & Annapolis Motor Lines, Inc., had filed with the Interstate Commerce Commission on September 23rd a rate increase of from 10 to 15 cents for passenger fares between Seat Pleasant, Maryland, and points within the District of Columbia. The ICC did not modify, change, or suspend this tariff which, under previously prevailing practice, would have gone into effect automatically.

The carrier did, in fact, place these rates into effect on October 25th without notice to the President or the Director of Economic Stabilization, or the OPA. During the interim, on October 2nd, the Price Stabilization Act requiring such notice and right to intervene by Federal authorities had gone into effect. On November 3rd the OPA sought the injunction in the United States District Court, which was denied. An appeal followed.

The court of appeals in an opinion by Justice Miller took the view that the act of October 2nd, being enacted subsequent to the Interstate Commerce Act, superseded that act "to whatever extent may be necessary to achieve its own purposes." The court continued:

> . . . Its clearly expressed purpose was to stabilize prices, wages, and salaries, affecting the cost of living, upon the basis of the levels which existed on September 15, 1942. To this end the President was authorized to issue a general order. To this end, also, a further express provision was added, prohibiting a common carrier from making any general increase in its rates which were in effect on September 15, 1942, unless it shall first give thirty days' notice to the President, or his designated agent, and consent to timely intervention before the Federal, state, or municipal authority which has jurisdiction to consider such an increase. . . . Congress made no exception in the act, in favor of carriers who had filed schedules prior to October 2, 1942, but had not put them into actual effect before September 15, 1942. We see no possible reason for writing such an exception into the act by way of interpretation.

The court agreed with the conclusion of the district court that the rate increase proposed by the carrier was a "general increase" within the meaning of the act of October 2nd. The court said on this point:

> . . . The term *general increase* has no well-defined meaning in the law of carriers or of public utilities. It does not appear in the Interstate Commerce Act and, while it has been used in decisions of the commission, the references have been casual rather than definitional. However, increases have been described as general when, for example, they affected 15 per cent of the total tonnage and 30 per cent of the total freight revenues of the area; when they affected rates on a particular class of commodities, or on particular commodities in a particular area. The contemporaneous administrative construction of the words by the Price Administrator makes the definition rest upon a distinction between an increase which is applicable to a class of passengers, shippers, or customers, and one which is applicable to a particular customer or transportation service under special arrangement. While this construction is not controlling, it is, we think, a reasonable one and one which expresses the intention of the act of October 2, 1942.

The court's reference was to procedural regulation No. 11, issued by the OPA, governing the filing of notice of rate increases by carriers and utilities. *Henderson v. Washington, Marlboro & Annapolis Motor Lines, Inc. (No. 8400).*

Option to Accept Tariff Denied

A PETITION to make a freight tariff for motor carriers in the state of Washington optional was denied by the department of public service. It was pointed out that the necessary result of making such a tariff optional, even if it were made optional in its entirety so that carriers would be required to choose between accepting it in its entirety or rejecting it in its entirety, would be to provide two different rates for the hauling of the same commodities between the same points, depending upon whether the commodities were hauled by a carrier who had accepted it by a carrier who had rejected it.

The petition, however, went further and requested authority not only to accept or reject the tariff in its entirety but also to accept or reject any particular item or items in the tariff. The effect of granting this authority, said the department, would be the same as in the case of authority to accept or reject it in its entirety, namely, that it would result in different rates for the hauling of the same commodities between the same points. Moreover, the objectionable features would be greatly multiplied under a system whereby a carrier would be permitted to accept or reject any particular item, for it might well be that no two carriers would choose to accept or reject the same item. The department said:

> Under the proposal of petitioners, a shipper who in a particular instance desired to ship any certain commodity from one point to another at the lowest possible legal rate would be required to ascertain not only whether the carrier whose service he desired to use was operating under Tariff No. 4, but also to ascertain whether the carrier in question had accepted or rejected the particular item in Tariff No. 4 which the shipper proposed to ship over the line of this carrier.
>
> But regardless of whether a particular carrier rejected Tariff No. 4 in its entirety, or rejected it only in part, the necessary result of granting to any carrier permission to deviate from any of the rates prescribed in Tariff No. 4 would be an unstabilized rate structure and unjust discrimination between shippers. The necessary result of the granting of such permission would also be to give an undue advantage or preference to shippers who knew of the difference in rates between carriers who operated under Tariff No. 4 and those who did not operate under Tariff No. 4, as compared with shippers who assumed, as all shippers now have a right to assume, that the rate for the hauling of a given commodity between two points would be the same regardless of what motor freight carrier performed the transportation service. In addition to resulting in unjust discrimination and undue preferences to shippers, another necessary result of the granting of the petition herein would be an unstabilized rate structure and the defeat of the department's control over common carrier rates due to the fact that any particular carrier would have the privilege of using the rates named in Tariff No. 4 when he found it to his advantage to do so from a competitive standpoint, or otherwise, and to use the rates named in Department's Tariff Nos. 5, 6, and 8 when it was not necessary to use the lower rates named in department's Tariff No. 4 in order to obtain business. The granting of permission to carriers to accept or reject all or part of Tariff No. 4 would substantially impair the control over the rates of common carriers given to the department by § 11(a), Chap. 184, Laws of 1935, as amended.

Re Pacific Inland Tariff Bureau et al. (Cause No. FH-7489).

Federal Interstate Power Control Extended

A DECISION by the Federal Power Commission, in *Re* Hartford Electric Light Co. (1941) 37 PUR(NS) 193 and (1941) 44 PUR(NS) 515, that the Hartford Company is subject to accounting orders of that commission has been sustained by the United States Circuit Court of Appeals for the Second Circuit. This company by reason of sales of electricity to the Connecticut Power Company, a member of the Connecticut Valley Power Exchange, is held to be a "public utility" as that term is defined in § 201(e) of the Federal Power Act.

The Hartford Company in 1936 sold to Connecticut Power facilities from its bushings on the wall of its generating plant to and including a substation from

which electricity is transmitted by Connecticut Power for its own needs in Connecticut and for sale of excess power in interstate commerce. Therefore, the court said, there can be no doubt that the Hartford Company is making sales at wholesale, as that term is defined in the act.

The generating company, said the court, cannot possibly lack knowledge of the fact that its sales to Connecticut Power are indispensable to exchange arrangements which culminate in transmission to and sale of considerable quantities of electric energy in Massachusetts.

A contention that the company is not a "public utility" even though engaged in interstate wholesale sales because it has no facilities for "transmission in interstate commerce" was overruled. The court said in part:

> Even if we assume that generation facilities are not within the commission's jurisdiction under § 201(b) or any other portion of Part II, and also that petitioner has no facilities for interstate transmission, still petitioner's contention is untenable: § 201(b) confers jurisdiction over not only facilities (1) for interstate *transmission* but also—and *disjunctively*—over facilities (2) for interstate wholesale *sales*. If the commission has no jurisdiction under § 201(b) over generation facilities, then that part of that section conferring jurisdiction over facilities for interstate wholesale sales becomes meaningless—unless there is a third category of facilities, *i.e.*, those used neither for transmission nor for generation. We must, therefore, look for that third category. We find it in petitioner's corporate organization, contracts, accounts, memoranda, papers, and other records, in so far as they are utilized in connection with such sales.

A majority of the court also held that there was an alternative ground for rejecting the company's contention. The court considered that generation facilities, where used as aids to such sales, are within the commission's jurisdiction under § 201(b) of the Federal Power Act. The court said:

> The point is that it is not as such that the generation facilities are subject to the commission's jurisdiction under § 201(b), but as facilities used in the business of knowingly selling electric energy wholesale in interstate commerce. It is the fact of petitioner's knowledge which should dissipate the apprehension expressed in the brief of *amicus curiae* [counsel for the National Association of Railroad and Public Utilities Commissioners] that the result of a decision sustaining the commission in this case "will be to bring under the commission's jurisdiction every generating company which generates any electric energy which *finds its way* into interstate commerce." We are not holding, nor did the commission hold, that the act has "the effect of bringing all owners of generating facilities" within that jurisdiction.

Hartford Electric Light Co. v. Federal Power Commission.

Service Obligation of City Plant in Town Limited

An order of the Wisconsin commission requiring the city of Milwaukee to extend water service in the town of Milwaukee to certain described premises was overruled by the supreme court of Wisconsin on the ground that the city's obligation did not extend throughout the whole town. The city operates a waterworks utility. By contract with the town it had extended service to residents in certain streets in a limited area. The contract expressly prohibited the town from extending its mains to any other streets than those described in the contract or to sell or to deliver water to any other individual or property than those covered by the contract. As part of an easement agreement relating to a main running through the town abutting residents were permitted to obtain water from the main for domestic uses only.

The question, said the court, was whether a municipal utility, which by contract with an adjoining town has assumed to serve small isolated and precisely limited portions of a town, has become a utility throughout that entire town and bound to extend its service in response to orders of the commission. It was conceded that the city was a municipal water utility subject to regulation and control by the commission. In the words of the court:

> We are of the view that if the Milwaukee

utility by extending its service beyond the limits of the municipality became a utility outside its boundares to the extent of its holding out as such, the geographical scope of this holding out must be measured by the terms and limitations of the contract with the town by which the service was extended.

The court referred to the decisions in Milwaukee *v.* West Allis, 217 Wis 614, 258 NW 851, 259 NW 724, and Milwaukee *v.* West Allis (1940) 236 Wis 371, 38 PUR(NS) 387, 294 NW 625. In the West Allis Case, said the court, the city undertook to supply the entire municipality which had contracted for water service.

The case of the town of Milwaukee was quite different. Here the city had done precisely what it was necessary for it to do to prevent it from becoming a public utility in the town as a whole. Its service obligation was governed by a carefully limited contract. A holding that the commission could compel the city to construct mains in the town of Milwaukee and to cover the entire territory in accordance with the needs of its population, said the court, was out of line with every limitation put by the city upon its holding out. The court continued:

> Such a holding would put an extraordinary burden upon the Milwaukee utility, and when it is considered that the authorization to municipal utilities to extend service outside their boundaries was originally based upon the theory that they should be permitted to dispose of surplus water, it would be completely at variance with the basis and purpose of the authorization.

City of Milwaukee v. Public Service Commission et al. 5 NW(2d) 800.

Low Return Allowed on Value of Telephone Property Is Confiscatory

A CIRCUIT court judgment upholding an order of the South Dakota commission which denied authority to increase telephone rates was reversed by the supreme court of South Dakota on the ground that it was confiscatory. The rate of return, computed on what the commission found to be net operating income and the fair value of property, was only 3½ per cent.

The court stated that it had found many cases holding rates of return of utilities ranging from 6 per cent to 8 per cent to be fair and reasonable. It had found no court or commission which ever held that a rate as low as 3½ per cent was a fair or reasonable rate of return for a utility.

Confiscation, said the court, is merely the taking of private property without just compensation and offends the Constitution. The court continued:

> If the property itself is taken by eminent domain, just compensation is its value at the time of taking. If the legislature, either by its own act or through the creation of an administrative agency, prescribes rates or charges for a public utility, *the use of the property* is taken, and just compensation is a reasonable rate of return upon the value of the property at the time it is being used for the public service. In other words, a utility is entitled to rates that will yield a reasonable rate of return after payment of operating expenses, taxes, and financial charges, for the use of the property devoted to public service. Anything less than that is unfair and unreasonable.

Book cost of the company's exchange plant was not used by the commission, nor urged by the company, for the reason that it gave a much greater value than the reproduction cost new basis, and it was this latter basis or method which the commission adopted to measure the fair value of the exchange plant.

Disallowance of interest during construction, the court held, was erroneous, since under the reproduction cost new theory, which assumes a rebuilding of the entire plant new, interest during construction is a cost associated with reconstruction. It was said that "interest during construction must be allowed and included in any rate base computation upon the reproduction cost new theory."

Rejection of going concern value was

held to be error. The court recognized that going concern value need not be separately stated and appraised as such, but such value, it was said, must be recognized. The commission had rejected going concern value in toto after accepting the estimate of its witness on fair value, based on reproduction cost new less accrued depreciation. The commission, it was held, erred in rejecting the only competent and undisputed evidence in the record on this subject.

The commission's action in allocating a portion of toll income to exchange income for the alleged use of exchange facilities in making toll calls was also held to be an error. The commission, by prior order, had required the company to include in its exchange service and rates the use of local facilities by exchange subscribers in making and terminating toll calls. *Northwestern Bell Telephone Co. v. South Dakota Public Utilities Commission.*

Limitation on Token Sales Not Discriminatory

A COMPLAINT by civic associations against a restriction on the sale of tokens for transportation on busses and street cars was dismissed by the District of Columbia commission. The issue was specifically limited to the question as to whether the sale of six tokens for 50 cents rather than the sale of three tokens for 25 cents constituted an unjust or unreasonable discrimination. The commission was of the opinion that discrimination did not exist.

In a dissenting opinion Commissioner Hankin criticized the brief decision that the record did not justify the finding of discrimination. He said that this was not a finding of basic fact leading to a conclusion which would require a denial of the application but was rather a description of a general psychological reaction which the commission entertained toward the record in the proceeding. Proper administrative procedure, he said, requires that upon a record made the commission shall make its findings of fact and conclusions of law from which the order might flow by necessary implication.

If findings were made supported by the evidence, Commissioner Hankin continued, they would of necessity lead to the conclusion that the application should be granted. He discussed the relationship between the weekly pass sold for $1.25 a week, the sale of six tokens for 50 cents, and the 10-cent cash fare for a single ride. He concluded that there was discrimination in the payment of fares in the sense that while one passenger pays one rate of fare per ride, another pays a different rate of fare. A suggestion that the statute does not in fact forbid discrimination but only unjust discrimination met his disapproval. He thought that the present rates worked a hardship on persons with low incomes. *Federation of Citizens' Associations et al. v. Capital Transit Co. (Formal Case No. 309, Order No. 2278).*

WPB Limitation Order Obviates Need for Gas Restriction Rule

IN view of the fact that a gas company could restrict service pursuant to the provisions of War Production Board Limitation Order L-174 [45 PUR(NS) 529], the Wisconsin commission disapproved without prejudice the filing of a rule restricting gas service. The proposed rule would permit the company to decline to serve new industrial, house heating, and space heating customers, or to supply increased amounts to existing industrial and space heating customers.

The company had taken the position that the rule would become effective upon

filing and did not require approval by the commission. The commission, on the other hand, was of the opinion that such a rule must have commission approval before it may be put into effect by a public utility. The commission said:

> We reached this conclusion because the proposed rule was not simply an incidental provision with respect to a rate schedule, but rather sets forth terms under which the service of certain individual customers could be curtailed or in fact terminated. Obviously, a rule which so circumscribed the company's statutory duty of service could not properly be put into effect without commission approval.

Issuance of Limitation Order L-174, the commission pointed out, made it possible for the company to restrict gas service without the enforcement of the proposed rule. Under the circumstances, therefore, it was considered unnecessary to pass upon the reasonableness of the rule. *Re Milwaukee Gas Light Co. (2-U-1807).*

Other Important Rulings

A CALIFORNIA court ruled that a landowner was not entitled to a mandatory injunction requiring an irrigation district to furnish water at a price fixed in a contract which had been superseded by an order of the commission fixing higher rates; that violation of the terms of such a contract could furnish no ground for an action for damages; and that an action for declaratory relief seeking a determination of rights under a contract superseded by orders of the commission failed to allege facts sufficient to state a cause of action. *Gillies et al. v. La Mesa Lemon Grove & Spring Valley Irrig. Dist. et al. 129 P(2d) 941.*

The Washington Department of Public Service, in ordering the cancellation of proposed increases in bus fares, accepted the depreciation reserve as measuring accrued depreciation and disallowed a management fee paid to a parent corporation in the absence of proof of cost, excluded "income charges" deducted from net operating income, and declared that a proposal to increase rates 25 per cent with a resulting increase in revenues of only 5 per cent, because of loss of passengers, is contrary to sound public policy. *Department of Public Service v. Everett City Lines, Inc. (Cause No. FH-7619).*

As the Public Utility Law prohibits free service, declared the Wisconsin commission in a water rate proceeding relating to a municipal plant, charges must be made for water service supplied churches or any other takers formerly served without charge. *Re Village of Linden (2-U-1859).*

The supreme court of South Dakota, affirming a commission order granting authority for operation of motor carrier service by a railroad, held that the question whether operation of such service was *ultra vires* for the railroad corporation was not in issue; that corporate capacity is not presented as a factor of convenience and necessity; that in issuing a certificate the commission neither grants nor adjudicates corporate power; and that the commission might consider whether the proposed service would promote the public interest by strengthening and preserving an indispensable transportation service. *Re Megan, 5 NW(2d) 729.*

In a proceeding relating to the validity of a municipal ordinance to prevent trespassing upon water properties the supreme court of Alabama held that a city in owning, maintaining, and operating its water supply system is performing a proprietary as distinguished from a strictly governmental function. *City of Birmingham v. Lake, 10 S(2d) 24.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 46 PUR(NS) NUMBER 1

Points of Special Interest

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TITLES

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PUBLIC UTILITIES REPORTS

DISTRICT OF COLUMBIA PUBLIC UTILITIES COMMISSION

Re Washington Gas Light Company

[Formal Case No. 316, Order No. 2401.]

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(HANKIN, Commissioner, dissents.)

[October 13, 1942. Petition for reconsideration denied November 16, 1942.]

PROCEEDING *involving annual determination of rates, rules, and regulations pursuant to the provisions of a sliding-scale arrangement for determining gas rates; higher rate schedules established. For subsequent proceedings, see post, pp. 45, 50.*

APPEARANCES: Stoddard M. Stevens, E. Barrett Prettyman, and C. Oscar Berry, Counsel, for the Washington Gas Light Company; H. R. Booth, Utilities Counsel, for the Office of Price Administration, Intervener; John Keane, Counsel, for the District of Columbia Gas Employees Union; Andrew McNamara, for Columbia Lodge No. 174 of the International Association of Machinists, Intervener; Wiliiam A. Duvall, Counsel, and Mrs. Mabel Inco Morris, for the Fort Davis Citizens' Association, Intervener; Roy L. Burdee, for the Chillum Heights Citizens' Association; Mrs. Cynthia Wentworth Hannum, for The Washington League of Women Shoppers, Intervener; Lloyd B. Harrison, Special Assistant Corporation Counsel, for the Commission.

By the COMMISSION:

Nature of Proceeding

This is a proceeding involving the usual annual determination of rates, tolls, charges, tariffs, rules, regulations and conditions of service of the Washington Gas Light Company pursuant to the provisions of the sliding-scale ararnge-

ment established by Order No. 1458, dated December 13, 1935, 11 PUR (NS) 469.

The sliding-scale arrangement provides that prior to the beginning of each rate year (defined as the twelve months' period from September 1st to August 31st, inclusive) this Commission shall determine after public notice and opportunity for hearing:

(1) An amount to be applied for the decrease or increase of rates to be effective during the said rate year, and (2) A schedule of rates, rules, and regulations accomplishing such decrease or increase.

On March 20, 1942 (Order No. 2219), the Commission ordered that an investigation be made, and on July 21, 1942, the Commission set the matter for hearing. Hearings were held on August 18 and 19, 1942, and on September 4, 11, 14, and 30, 1942.

The rates in effect during the last test year (the twelve months' period ended June 30, 1942) were those established by Order No. 1921, effective as of September 1, 1940. These rates were based upon the operating experience of the company for the test year July 1, 1939, to June 30, 1940.

During the present proceeding, we indicated that our responsibilities are twofold. In the first place, it is the duty of this Commission to determine, in accordance with the provisions of the sliding-scale arangement as such arrangement is now constituted, whether the Washington Gas Light Company is entitled to an increase in rates for the year commencing September 1, 1942, and the amount of such warranted increase. This responsibility is so clear-cut that to ignore it would constitute an evasion of our duty and would be a serious reflection upon the ability of this Commission to cope with its problems in a fair and impartial manner.

Secondly, having made this determination, it is our duty to give recognition to existing conditions and the bearing of such conditions upon the question before us. In addition to the present economic situation, which admittedly is of vital importance, we must also consider the credit position of the company and its ability to finance its requirements for plant expansion and to render adequate service to the consumers in the District of Columbia.

At the commencement of hearings in this proceeding, August 18, 1942, the Office of Price Administration, through H. R. Booth, its utilities counsel, filed with this Commission its petition for leave to intervene. This petition was granted, and counsel for the Office of Price Administration attended all the hearings and submitted briefs.

Exhibits were presented by the Commission's chief accountant and chief engineer reflecting the results of their investigations, which extended over a period of several months. The chief engineer's testimony related to the allocation of the rate base to service outside the District of Columbia. The chief accountant testified that computations in accordance with the sliding-scale arrangement indicated that the company was entitled to a rate increase of $324,718.06. The company's computation indicated a rate increase of $381,597. The difference between the two amounts is occasioned entirely by certain adjustments to operating expenses and taxes and those

required under § 6 of the sliding-scale arrangement made by the Commission's witness but protested by the company.

Careful study has been given to all factors having a bearing upon these problems in arriving at the decisions hereinafter set forth.

Staff Adjustments

Payment to the Greater National Capital Committee

[1] The question involved is whether or not the payment made by the company is in the nature of a contribution or a sales promotion expense. The Greater National Capital Committee is an arm of the Washington Board of Trade, and its chief function is to attract visitors to the Nation's Capital. The principal means employed is that of inducing the holding of conventions in Washington. In Formal Cases 292 and 304 the Commission held that the benefits derived by the Washington Gas Light Company from this expenditure were of such a conjectural nature that it must be viewed as a donation to a worthy civic organization rather than a sales promotion expense as the latter term is ordinarily defined. We, likewise, hold this view and find further that in view of the present overcrowded condition of the city due to the war effort there is even less justification for such an expense. The amount in controversy, $88.85, stated by the company as being a token payment for purposes of Commission ruling, should therefore be disallowed as an operating expense for rate-making purposes.

Sales Promotion Expense

[2, 3] This issue arises by reason of the Commission's requirement that the merchandising and jobbing activities of the company be segregated from its principal business of furnishing gas service and relates to the allocation of certain expenses applicable to both the sale of gas and the sale of appliances, namely the salaries paid retail salesmen and the cost of advertising appliances.

The sales promotion department of the company is composed of several divisions, and the salaries of the retail salesmen constitute only about 25 per cent of the total salesmen's salaries. The remaining 75 per cent covers wholesale and promotional salesmen who ordinarily are not engaged in the sale of appliances and therefore receive little or no commission. The retail salesmen are paid comparatively small salaries plus commissions on appliance sales. The commissions are paid not only on appliances sold by the gas company, but upon appliances sold by other dealers when such sales result from the efforts of the gas company's salesmen. In accounting for the salaries and commissions paid the retail salesmen, their entire salaries and the commissions paid on appliance sales by other dealers are charged to Sales Promotion Expenses, while commissions paid on appliances sold directly by the gas company are charged to Merchandizing and Jobbing Expense. The company contends that this practice is proper for the reason that it represents an allocation based upon the time of the retail salesman devoted to extolling the virtues of gas as a fuel and the actual sale of appliances. The company cites the fact that on the average the salesmen close only one sale out of fifteen calls. The Commission's

witness contends that the salaries paid these salesmen represent additional compensation for the selling of appliances, and such salaries should be accounted for in the same manner as the commissions—that is, upon the ratio of commissions paid on appliances sold by the company to the total commissions paid.

The compensation of the retail salesman depends in major part on the sale of appliances, and it is therefore obvious that his major efforts are devoted to the selling of appliances. It follows that the compensation paid these salesmen, whether it be in the form of commissions or salaries, is assignable to Sales Promotion Expense and Merchandising and Jobbing on the basis of results produced, and since this is the method used by the Commission's witness, we think the adjustment is proper.

[4] On the second item, of appliance advertising, the company contends that 80 per cent of such advertising is a proper promotional expense, whereas the Commission's witness has recommended that only 50 per cent of such expense be allowed. The only support for the 80 per cent allocation advanced by the company was the judgment of their sales manager, and the ratio of appliance sales by the company to sales made by other dealers. The allocation made by the Commission's witness is based upon the practice of the company of paying, under certain conditions, 50 per cent of the cost of advertising gas appliances by other dealers. In view of the Commission's requirements that the appliance business of the company be segregated entirely from its gas business, the merchandising and jobbing activities of the company must be viewed in the light of the relations of the company with any other appliance dealer. The appliance or general advertising of the company for the test year under consideration constituted only about 11 per cent of the total advertising, the remainder being characterized as institutional advertising. The adjustment proposed by the Commission's witness relates only to the former. The fact that the company segregates appliance advertising from its other or institutional advertising might of itself be sufficient grounds for saying that all of such advertising relates entirely to the merchandising activities of the company. However, in view of the practice of participating in advertising campaigns of other dealers we will go no further than the adjustment made by the Commission's witness.

We hold that the aggregate adjustment of $26,824.75 applicable to the items discussed above is proper.

Expense of Financing

[5] The Commission's witness excluded from operating expense certain costs incident to increasing the authorized capital stock of the company, on the grounds that they pertain only to the securing of new capital and as such are properly chargeable to capital stock expense when and if the stock is issued. The company contends that these expenditures should be permitted in operating expenses for the reason that, through no fault of the company, the Commission was not organized and able to give the approval necessary when the stock in question ($4.25 preferred) could have been sold advantageously. We sympathize with the

company's position, but in view of the requirements of the classification of accounts and the nature of the items in question, and due further to the fact that the consumers likewise were not at fault, we cannot depart from proper accounting and therefore hold that the adjustments made by the commission's witness, aggregating $3,256.67, are proper.

Payment to U.S.O.

[6] The Commission's witness excluded from operating expense a payment of $1,250 to the U.S.O. on the grounds that such payment was a donation not necessary in the furnishing of gas service and as such properly includible in Account 538—Miscellaneous Income Deductions. The company contends that this is not an ordinary donation, inasmuch as the U.S.O. is a war project backed by the Federal government and that the morale and behavior of the armed forces are of vital concern to the company and to all citizens. We agree, of course, that the U.S.O. is a necessary organization in the conduct of the war effort, but we cannot agree that the donation made by the company is different from other donations to worthy causes. The customers of the company are called upon for direct donations to this organization, and they should not be called upon for a further donation in the form of increased rates for gas service. We, therefore, approve the adjustment as made by the staff.

Excess Profits Tax

[7] The Commission's witness eliminated the excess profits tax paid for the year 1941 after adjustment for the effect of such elimination on normal taxes because of the possible future adverse effect upon consumers with little material benefit to the company. The company contends that it would not have been liable for excess profits tax if the Commission had been in a position to act expeditiously on its application for authority to issue $4.25 preferred stock in 1941 and that the company had no "excess" profits in the popular sense of the word. We recognize the equity of this contention. However, we cannot overlook the fact that the recognition of excess profits tax as a proper element in the determination of rates for service under the rates of taxation presently proposed in the pending Revenue Act for 1942 would result in a continuing cycle of rate increases severely penalizing the consumer without materially benefiting the company. We are of the opinion that as a general proposition, excess profits taxes under existing conditions should not be considered in the determination of rates. Therefore, the adjustment of $43,928.02 to eliminate this item is approved.

Section 6 Adjustment

[8] This item relates to the adjustment under § 6[1] of Order No. 1458 (1935) 11 PUR(NS) 469, 476,

[1] If, at any adjustment date, it appears that the operating expenses of the companies for the test year were increased or decreased by reason of change in the rates for production labor, the unit price of natural gas, the delivered unit price of other fuels, or taxes, and the aggregate amount attributable to such change during the test year for any or each of the above enumerated items exceeds 5 per centum of the aggregate amount of any such item for the test year, then there shall be an adjustment in the Amount Available for Return equal to the effect of such change in unit costs for the entire year.

on account of the increase in the price of fuel. In making this adjustment the company has used the inventory cost of fuel as of June 30th, whereas the Commission's witness has used such cost as of May 31st. The Commission's witness contends that since the operating expenses of the company were not affected by the average cost of fuel as of June 30, 1942, the use of such cost would be contrary to the provisions of § 6. The company contends that the unit cost of fuel as of June 30th should be used, on the theory that the purpose of § 6 is to provide for known increased costs. It is clear that the intent of § 6 is to allow certain adjustments for increased costs, but it is equally clear that there is a definite limitation on the method of determining the amount of the adjustment. If we were to apply the purpose of § 6 indiscriminately there is no doubt that other adjustments would be necessary, some upward and some downward. We think that a departure from the specific provisions of § 6 would not be warranted, and even though it is recognized that the purpose of § 6 is to provide for increased costs, we hold that the adjustment made by the Commission's witness is in accord with the specific provisions of § 6 and that the disputed difference of $3,294.63 should not be considered in the determination of amount available for increase of rates.

Operating Expenses

[9] In addition to the adjustments made by the witness for the Commission, Commissioner Hankin raised several questions relating to the propriety of certain operating expenses.[2] On these questions we have the following opinion and conclusion:

Order No. 1458, which established the sliding-scale arrangement, provides that the Commission shall determine the net amount available for return for each test year by deducting from the gross operating revenue of the company the adjusted operating expenses for the test year, the accruals for retirement reserve, reasonable accruals for uncollectible bills, and reasonable accrual for taxes.

The order further provides that the operating expenses of the company shall be adjusted for any accounting departures[3] during the test year; for over or under accruals in taxes, uncollectible bills, and such other accrued accounts for which adjustment is provided by the prevailing accounting classification; and to exclude those expenses allocated to gas service outside of the District of Columbia.

Thus the sliding-scale arrangement does not attempt to define operating expenses or to indicate that certain types of operating expenses should be excluded in determining the net amount available for return, beyond the adjustments described above. The sliding-scale arrangement, however, does clearly indicate that operating expenses should be determined in accordance with the prevailing accounting classification.

On January 11, 1940 (Order No.

[2] Three items aggregating $90 were conceded by the company because of the insignificance of the amount, and adjustment has been made therefor.

[3] "Accounting departure" means a departure, not resulting solely from the exercise of judgment, from the correct application of the accounting classification and interpretations prescribed by the Commission, not in conflict with the sliding-scale arrangement, prevailing at the date of such entry.

1846), this Commission prescribed for use by the Washington Gas Light Company the Federal Power Commission Uniform System of Accounts prescribed for Natural Gas Companies subject to the provisions of the Natural Gas Act, with certain modifications to permit the continuance of the sliding-scale arrangement. This system of accounts states the purpose of the operating expense accounts to be as follows:

"The operating expense accounts (701 to 809) are designed to show in detail the cost (except depreciation, amortization, and depletion, certain property losses, and taxes) of furnishing gas utility service."

It follows, therefore, that if the operating expenses of the company are recorded in accordance with the prevailing Uniform System of Accounts the function of the Commission is to determine whether or not the expenses so recorded are reasonable. Obviously, the Commission itself cannot, collectively or individually, review the books of the company to make a determination as to the reasonableness of every item and must depend upon its staff to call attention to those that appear questionable. This the staff has done, and we have herein expressed our opinion relative to such items. We find that the operating expenses of the company for the test year ended June 30, 1942, excepting the adjustments heretofore discussed, have been recorded in accordance with the Uniform System of Accounts prescribed by this Commission and that such expenses are fair and reasonable and properly considered in the determination of rates under the sliding-scale arrangement.

Federal Income and Excess Profits Taxes

The computations of the net amount available for rate increase presented by both the company and the Commission's witness included accruals for Federal income taxes at the rate of 40 per cent for the last six months of the test year under consideration (January 1, 1942, to June 30, 1942), in accordance with that provision of the sliding-scale arrangement which provides for a reasonable accrual of taxes. For the first six months of such test year (July 1, 1941, to December 31, 1941), this same rate was applied in accordance with the provisions of § 6 of the sliding-scale arrangement.

However, present-day conditions compel us to consider whether accruals for Federal income taxes, at rates considerably higher than rates in effect in previous years, should be allowed in their entirety for rate-making purposes. Much has been said recently regarding the allowance of Federal income taxes on a normal-year basis rather than on the basis prevailing in a so-called "abnormal year." Our difficulty here lies in the necessity for making a distinction between normal and abnormal taxes. It is true that rates of taxation imposed during the year 1941 and proposed for the year 1942 are substantially in excess of rates imposed in prior years. However, it requires very little imagination to foresee that the proposed rate for 1942, while such rate is abnormal as compared with the rates in effect in prior years, may well be a normal or even a subnormal rate for some years to come. After weighing

all factors to the best of our ability, we conclude that for the purpose of determining the amount available for rate increase for the rate year beginning September 1, 1942, the calculation of Federal income taxes for the test year under consideration (July 1, 1941, through June 30, 1942) at the rate of 31 per cent is reasonable. Such a calculation will result in a further decrease of $115,863.09 in adjusted operating expenses and will eliminate the adjustment of $4,929.39 to provide for increase in taxes under the provisions of § 6 of the sliding-scale arangement.

[10, 11] With respect to excess profits taxes, we are of the opinion that no increase in rates should be predicated upon the liability of a utility for excess profits taxes. For this reason we have disallowed as an operating expense for the test year ended June 30, 1942 the excess profits tax of $43,928.02, in order to prevent the direct inflationary effect which such allowance would invite.

The record indicates that the company will not be liable for excess profits tax for the year 1942. However, to guard against the possibility that any increase in rates might result in the imposition upon the company of liability for excess profits taxes on revenue derived from such rate increase, we requested the company to propose a protective arrangement which would obviate such a possibility. The arrangement proposed by the company, which in our opinion will achieve the desired result, is set forth below:

"In the event such increased rates would result in the payment of excess profits taxes by the Washington Gas Light Company, any portion of the amount derived from the increased rates hereinafter authorized, which, if retained by the company would be subject to excess profits tax, shall be recorded in a specially provided deferred credit account. The amount derived from increased rates shall be deemed to be 2.28 per cent of the amount billed for sales of gas subsequent to the effective date of this order. The above-stated per cent is the ratio of the increase authorized herein to the total sales of gas for the test year ended June 30, 1942, calculated at the rates hereinafter authorized.

"The amount recorded in the deferred credit account as of December 31, 1942, and as of December 31st of each year thereafter so long as this order shall remain in effect, shall be returned to the gas customers in the District of Columbia by appropriate deductions from gas bills rendered to such customers as soon after December 31st as practicable. The amount of individual refunds shall be determined by ascertaining, by classes of service, the relation of the amount refundable to the total amount billed during the month of December and applying such percentage to each customer's December bill. Refunds so determined shall be shown as credits on customers' bills as soon after December 31st as practicable. In the event the amount recorded in the deferred credit account as of December 31st is less than $10,000, such amount shall be treated as operating revenue."

Financial Position of Company

[12, 13] There is still another and very important problem for consideration, namely the financial position of

the company and particularly its ability to secure capital economically for the purpose of expanding its plant to meet the growing demands for gas service. We must weigh the necessity for an increase in rates against the broad problem of adequate service. Low rates are desirable only when coupled with adequate service, and such service cannot be rendered by the company if it is unable to secure funds to provide the necessary additional facilities. The District of Columbia has been characterized as the No. 1 defense area of the United States, and it is vital that the company be in a position at all times to provide adequate service.

It is a matter of record that the company recently attempted to sell 40,000 shares of $5 cumulative preferred stock, but was successful only to the extent of being able to sell 18,206 shares of this stock. This was due to a number of factors, and a recitation of events and facts preceding and subsequent to the offering of this stock shows that the financial position of the company merits our most serious consideration.

On January 17, 1941, the company filed an application with this Commission for authority to increase its capitalization by 90,000 shares of $4.25 preferred stock. Due principally to the lack of a quorum on the Commission this application was not acted upon until March 26, 1942, Order No. 2221, 43 PUR(NS) 435. At that time, due to depressed market conditions, the company was unable to sell this newly created stock and endeavored to sell 40,000 shares of its $5 cumulative preferred stock with the result heretofore stated. In approving the sale of the $5 stock the Commission considered, among other factors, the financial position of the company as of December 31, 1941. At that time income deductions and preferred dividends were earned 1.88 times, and the earnings per share of common stock were $2.24. Our order was issued April 21, 1942, and income for the twelve months ended April 30, 1942, showed that income deductions and preferred dividend coverage had declined to 1.75 times, while earnings per share of common had declined to $1.96. For the twelve months ended July 31, 1942, the former figure had declined to 1.67 times and the latter to $1.80. This decline in income is not due entirely to increased provision for Federal income taxes. Substantial increases in the cost of labor and material have occurred during the period under discussion, and such increases have been provided for only in part in the determination of the amount available for rate increase. Labor costs included in operating expenses for the test year under consideration exceed labor costs for the prior test year by more than $300,000, a part of which was attributable to the increased volume of business.

Increase in Rates Warranted

After careful consideration of all factors having a bearing on this case, including the fact that the credit position of the Washington Gas Light Company depends in large measure upon the integrity of this Commission in administering the sliding-scale arrangement, we are of the opinion that, after making the adjustments hereinbefore approved, the amount available

for increase in rates under the sliding-scale arrangement for the rate year beginning September 1, 1942, is $201,424.74.

This increase in rates will not restore the earnings of the company to the level obtaining prior to the decline, nor is it the intent of the sliding-scale arrangement to do so. It will, however, tend to arrest the decline and preserve the principles inherent in the sliding-scale arrangement, on which, as heretofore stated, the credit position of the company depends in large measure.

The amount of $201,424.74 was determined as follows:

Adjusted operating revenues		$8,918,656.27
Adjusted operating expenses		7,301,988.67
Net amount available for return prior to adjustment allowed under § 6 of Order No. 1458		$1,616,667.60
Adjustment under § 6 of Order No. 1458		
Production labor	$20,043.06	
Production fuels	41,572.89	(61,615.95)
Adjusted amount available for return		$1,555,051.65
Return allowed (6½% of Rate Base of $28,088,322.57)		1,825,740.97
Deficiency in return		270,689.32
Amount available for rate increase for rate year beginning September 1, 1942 (¾ of Deficiency)		203,016.99
Less: Undistributed portion of amount available for reduction of rates for rate year beginning September 1, 1940		(1,592.25)
Net amount available for rate increase		$201,424.74

It will be noted that the final conclusion as to the net amount available for increase in rates is $123,293.32 less than the amount determined by the Commission's staff. This difference is due to the elimination from operating expenses of the $90 conceded by the company (see footnote 2—page 9) and to the computation of the accrual for Federal Income Taxes at 31 per cent rather than 40 per cent.

Disposition of Amount Available for Increased Rates

The company presented revised rate schedules which would increase its annual revenues by $357,500. This amount is $156,075 in excess of the amount that we have concluded is available for rate increase. The staff of the Commission has prepared new rate schedules providing increased annual revenue of $200,141, to be apportioned among the different classes of consumers as follows:

Residential	$53,429
Commercial	35,908
Domestic Space Heating	101,208
Commercial Space Heating	6,387
Seasonal Off Peak	218
Wholesale Apartment House	2,991
	$200,141

The difference of $1,283.74 between the above amount and the amount found available for rate increase will be held available for future rate increase.

[14] The rate schedules presented by the company eliminated the present separate schedule for space heating, proposing to include future consumption for that purpose along with regular domestic or commercial use. This will eliminate the necessity of maintaining two separate meters on premises using gas for both space heating and domestic or commercial purposes. We conclude that, in view

of a possible meter shortage, the elimination of the separate space-heating schedule is warranted, and the schedules submitted by the Commission's staff have been prepared on this basis. We further conclude that the apportionment of the $200,141 as the amount available for increase in rates is fair and equitable.

Effect of Increased Rates

The new domestic rates will result in an average increase of 3 cents per month per customer. Domestic customers using 2,500 cubic feet or less per month will sustain no increase. Space-heating customers' monthly bills for the 8-month heating season will be increased an average of 57 cents for all customers. The typical space-heating customers' bills will be increased by 72 cents per month for the 8-month heating season. The average increase for commercial and industrial customers will amount to 46 cents per month. The total increase for all customers is 2.28 per cent in excess of rates for the preceding year.

The cost of gas constitutes but 1.17 per cent of the average cost of living in Washington, according to statistics of the Labor Department, and based on the percentage increase for gas service just stated the cost of living index would be increased by only about 1/37 of 1 per cent. We cannot conceive that such an increase would have material inflationary tendencies.

Conclusions and Findings

We conclude and find as follows:

(1) That the rate base for determining rates to be charged by the Washington Gas Light Company under the sliding-scale arrangement for the 12-month period beginning September 1, 1942, is $28,088,322.57, including working capital of $1,172,656.02, $597,044.81 of which is for cash working capital and $575,611.21 for materials and supplies.

(2) That gross operating revenues during the test year ended June 30, 1942, amounted to $8,918,656.27; that adjusted operating expenses including taxes amounted to $7,301,988,67; that the adjustments providing for increase in certain operating costs in accordance with § 6 of Order No. 1458 (1935) 11 PUR(NS) 469, amount to $61,615.95; that the amount available for return is $1,555,051.65; that the amount to be reflected in increased rates for the rate year beginning September 1, 1942, after considering $1,592.25 remaining from the amount available for rate decreases authorized by Order No. 1921 dated August 23, 1940, is $201,424.74.

(3) That the amount of $201,424.74 should be distributed: $53,429 to Schedule "A," $101,208 to domestic space-heating customers formerly served under Schedule "B" who will hereafter be served under Schedule "A," $35,908 to Schedule "C," $6,387 to commercial space-heating customers formerly served under Schedule "B" who will hereafter be served under Schedule "C," $218 to Schedule "E," $2,991 to Schedule "F," and $1,283.74 to subsequent years' rate adjustment.

An appropriate order will issue.

HANKIN, Commissioner, dissenting:[1] I dissent from the opinion and order of the Commission on four main grounds:

(1) The order of the Commission is in utter disregard of, and contrary to, the Act of October 2, 1942, amending the Price Control Act;

(2) In this proceeding, the Commission has so far departed from the usual course of administrative proceeding, and has so disregarded the rules of proper procedure, that it deprived the public of a full and fair hearing;

(3) The Commission's determination that the Washington Gas Light Company is entitled to an increase in rates is based upon errors in the sliding-scale arrangement and upon conclusions unsupported by the evidence in the record;

(4) With proper application of the sliding-scale arrangement, and in the light of such other facts as are pertinent to this case, the present rates should be decreased by the sum of $617,874.36.

The Price Stabilization Act

On October 2, 1942, Congress passed an act to amend the Emergency Price Control Act of 1942, in which it was provided:

"That no common carrier or other public utility shall make any general increase in its rates or charges *which were in effect on September 15, 1942,* unless it first gives thirty days' notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, state, or municipal authority having jurisdiction to consider such increase." (Italics supplied.) Chapter 578, 2d Session, Public Law 729, 77th Congress, H. R. 7565.

On October 3, 1942, the President issued an executive order in which he designated the Director of Economic Stabilization as the agency to receive notice pursuant to the above provision.

This Commission now issues an *order,* in which it is provided in Section 2: "That the rates, tolls, and charges *to be charged* by the Washington Gas Light Company for gas service in the District of Columbia *shall be* in accordance with the following rates, tolls, charges, tariffs, rules, regulations, and conditions of service." The rates prescribed in this order are higher than those which were in effect in the District of Columbia on Septem-

[1] Since the Commission decided to issue its opinion and order without giving me any reasonable time in which to write my dissenting opinion, I filed a draft of my dissent under protest, reserving the right to substitute an opinion in more finished form.

In order not to delay the decision in this case, I was preparing a draft of an opinion, when on Friday, October 9th, I received the first draft of the majority opinion. This required changes in my draft. On October 12th, I received a second draft of the majority opinion containing many changes. On October 13th, for the first time, I was handed a copy of the Commission's order, making the rates retroactive to September 1st. On the same day, I was informed by the majority, that the majority opinion and order would be issued immediately, without giving me an opportunity to complete my dissenting opinion. I, therefore, hurriedly whipped my draft into shape, but had no opportunity to answer many points raised in the majority opinion, and had no opportunity to support my opinion by adequate citations of authorities. This I intended to do in my final dissenting opinion.

Upon careful reading of the majority opinion I find that little need be done to answer it. I feel that my opinion should be annotated by ample citations of authorities. Under the circumstances, however, I am filing this revised copy of my dissent without the necessary number of citations.

ber 15th, last. This order is thus contrary to an express act of Congress.

The fact that the Office of Price Administration had intervened in this case is in no manner sufficient compliance with this act of Congress. The history of this legislation indicates that Congress was quite well aware of the fact that the Office of Price Administration had intervened in this case. It was a matter of common knowledge, of which Congress must have taken legislative notice, that the intervention by the Office of Price Administration was beset by all types of limitations in the prosecution of this case. Nevertheless, Congress enacted this statute, and a reasonable inference is that the agency designated by the President would have the right to appear before this Commission and present such facts as he may deem advisable pertaining to all matters which are involved in rate making. Therefore, the fact that an agency of the Federal government had already participated in the hearing in this case in no way absolves this Commission from its duty of holding up any order increasing rates until the Director of Economic Stabilization will have had his thirty days' notice and an opportunity to intervene.

In § 3 of its order, the Commission also prescribes that "under the terms of the sliding-scale arrangement, the rates, tolls, charges, rules, regulations, and conditions of service hereinprescribed *became effective as of September 1, 1942.*" If, by this, it is intended to make the order retroactive so that the rates might be said to have been in effect on September 15, 1942, the violation of the statute is so much the worse. The Commission thus provides the company with a means of evading the law. To me this is shocking, although not surprising in view of other circumstances attending this case, as will appear from this opinion.

The Nature of the Proceeding

This is an annual rate hearing under the sliding-scale arrangement with the Washington Gas Light Company, instituted in 1935. In utility and Commission circles it is generally referred to as a routine hearing. The Commission's accountants audit the books of the company, pick out a few small items for suspension, a hearing is held on these few items, and a mathematical formula is applied fixing the rates for the next year. If any substantial questions arise, they are either kept "pending"[2] or are set aside as being not within the "scope" of the hearing.

Prior to the hearing in this case, which was set for August 18, 1942, the Commission and the company had a prehearing conference on August 14th. At this conference the Commission's staff raised questions as to a number of relatively small items, and I also raised a number of ques-

[2] The order of investigation, instituting the 1941 proceeding under the sliding scale, provided: "Section 2. That an investigation be made relative to the rate of return to be allowed the Washington Gas Light Company on its property used and useful for the convenience of the public." Although that was part of the investigation for the purpose of setting the rates for the period of September 1, 1941, to August 31, 1942, the subject of the rate of return was not touched upon at the hearing. The only issue at the hearing was an item of about $1,200 contributed by the Washington Gas Light Company to the Greater National Capital Committee. It is explained that the question pertaining to the rate of return is still one of the items "pending investigation," although nothing whatever has been done by the Commission or its staff by way of "investigating."

tions. The latter question related to the rate base and various items included in "operating expense."[3] Immediately, the company took the position that, if such major questions were to be considered, the company would not be prepared for the hearing set on August 18th. It stated that it would require some sixty days in which to prepare for the hearing. The Commission was also unprepared to go into these major questions. As the then Chairman of the Commission,[4] I granted a continuance of sixty days and nothing to the contrary was stated by either of the other Commissioners who were present. On the following day, however, the Commission, for reasons inexplicable to me, but now quite understandable, decided that the hearing was to take place on August 18th, although neither side was prepared to go into the important questions which will be treated in this opinion.

It has been intimated by the company in the course of the hearing, as also by the press in both the news and editorial columns, that it was "unfair" to raise these major questions at a time when the company was applying for an increase in rates under the sliding-scale plan, after a number of reductions in rates had been effected through this plan in the previous years.[5] The argument resolved itself into a complaint that the sliding-scale plan should work "both ways," and the impression given was that these major questions were raised in order to avoid an increase under the sliding-scale plan. The complaint against my raising the major questions, however, was merely a smoke-screen to hide the real issues involved under the sliding-scale plan itself. The same questions would have been raised, had the computation shown that the ratepayers were entitled to another reduction in rates this year. If there is any "unfairness," it lies not in my having raised these questions, but in the fact that these questions had not been raised in previous years. There is no telling by how much the rates should have been reduced, had these questions been raised and properly determined.

The company has also intimated that, if questions of a major character were to be raised, it should be given an opportunity to terminate its "agreement" to be bound by the sliding-scale plan upon ninety days' notice, in accordance with Finding No. 3, Order No. 1458, issued December 13, 1935, 11 PUR(NS) 469, 478, which embodied the sliding-scale arrangement.

The questions I raised were by no means the result of a careful analysis of the data. They were merely the result of a cursory review of the exhibits prepared by the accounting staff. The first glimpse any of the Commissioners had into the figures relating to the proceeding was on August 13th, the day before the prehearing conference. Prior to this date, none of the elements which entered into the rate determination had been discussed by the Commissioners, either among themselves or with the staff, except the item of "Salaries of Officers and Executives," when several months before a question was raised why this item was omitted from the Commission's annual reports, as is required by our statute.

[4] Three days later, the other two Commissioners elected Commissioner Flanagan as Chairman, as of September 1, 1942. This explains why the first part of the hearing was conducted under my chairmanship, and the latter part under Commissioner Flanagan's chairmanship; also the reference to Commissioner Flanagan throughout this opinion as the "present Chairman."

[5] The total reductions in rates, since the adoption of the sliding-scale plan, amounted to $328,000; the rate increase sought by the company this year is over $381,600.

The company's understanding of its "rights" under the sliding-scale arrangement is entirely erroneous. It treats of the arrangement as an "agreement" between the Commission and the company. "We have an agreement with the Commission, and we simply come in, together with the Commission's staff, and say the figures under the sliding-scale arrangement which has been established by the Commission results in so and so; that is all there is to it," says counsel for the company. Yet, the sliding-scale arrangement lacks all elements of an agreement. It was not an agreement entered into by the parties concerned, but an *order,* in which the Commission set for itself a formula to follow in future rate determinations. True, the sliding-scale arrangement was an order in which the company acquiesced. This order, however, like any order of the Commission, is subject to modification or termination by the Commission.

Section 1 of this order adopted the initial rates, rules, and regulations under the sliding-scale arrangement, and § 2 provided that subsequent rates should be in accordance with the sliding-scale arrangement, or may be modified or changed *in accordance with law, and in conformity with Finding No. 3.* Assuming that the Commissioners could in 1935 thus bind either themselves or their successors as to the manner in which rates should be determined, there is nothing in these provisions which in any way diminishes the duty of the Commission to examine all elements of rate making in any rate proceeding. The effect of the above provisions is simply that changes in the arrangement should be made upon ninety days' notice, with or without prior hearing. There is nothing in these provisions which indicates that the Commission may not at any time investigate and ascertain the facts, whether finally it will or will not terminate or modify the arrangement. Assuming further, that there is anything *in this arrangement* which would absolve the Commission from its duty to determine the facts relating to all elements which enter into rate making, then this order must be held contrary to Par. 18 of our statute, which provides, inter alia that "the right to alter or amend *all orders* relative thereto is reserved and vested in the Commission, notwithstanding any such arrangement and mutual agreement."[6] Thus, if looking to the four corners of the sliding-scale arrangement itself, there is still question as to the right of the Commission to modify or terminate, the provision of Par. 18 of the statute is conclusive in this regard.

In view of the above, there is no

[6] "Paragraph 18. That nothing in this section shall be taken to prohibit a public utility, with the consent of the Commission, from providing a sliding scale of rates and dividends according to what is commonly known as the Boston sliding scale, or other financial device that may be practicable and advantageous to the parties interested. No such arrangement or device shall be lawful until it shall be found by the Commission, after investigation, to be reasonable and just and not inconsistent with the purposes of this section. Such arrangement shall be under the supervision and regulation of the Commission. The Commission shall ascertain, determine, and order such rates, charges, and regulations, and the duration thereof, as may be necessary to give effect to such arrangement, but the right and power to make such other and further changes in rates, charges, and regulations as the Commission may ascertain and determine to be necessary and reasonable, and the right to alter or amend all orders relative thereto, is

merit to the company's contention that major questions relating to the elements of rate making cannot be raised, unless the sliding-scale arrangement is terminated upon ninety days' notice.

However, the argument that the company should be given an opportunity to terminate the sliding-scale arrangement lacks candor, for, at the same time, the company argued vigorously that it needed the sliding-scale arrangement; that the company was in the process of seeking credit through the sale of preferred stock and bonds; and that the sliding-scale arrangement was a "distinct advantage." "The company must have credit; we have got to have money," counsel for the company insisted. That the sliding scale, as it now operates, is a "distinct advantage" to the company, there is no doubt. But the company's contention only means that it must continue charging rates which otherwise might be deemed excessive simply because it is in need of additional capital. I do not think that the ratepayer, whose payments are based on the entire rate base, not merely on the equity of the common stockholders, should be charged with the company's costs of financing.

In the course of the hearing, the present chairman emphasized that this case involves the "fairness" and "integrity" of the Commission.[7] With this I am thoroughly in accord. I should go further and say that *every* case before the Commission involves its fairness and integrity. By this I understand that the Commission must "fairly" determine all elements of fact, and must apply the law to the end that the interests *of the public and of the utility* might be fully protected. "Fairness" does not mean the blind application of a mathematical formula, without a thorough examination of the facts; "integrity" does not mean that facts should not be scrutinized, merely because they had not been scrutinized before.

It is not sufficient to make such self-serving declarations as "careful study has been given to all factors," and, at the same time, shift the entire responsibility on the staff for whatever items are called to the Commission's attention. No matter how able the staff, the responsibility is ours. It is a well-known fact that the care which will be exercised by able accountants in bringing out questionable items will generally reflect the policies of the Commission. If substantial items have been overlooked, or if the accountants merely adopt the explanations of the company on borderline questions, the fault is not theirs, but ours. We cannot arrive at a "fair" determination of fact, when the testimony is at war with reality, merely because "the Commission cannot, collectively or individually, review the books of the company to make a determination as to the reasonableness of every item." The requirements of "fairness" and "integrity" are not thus easily satisfied.

The Commission also adopted the company's claim that it is in need of financing, elaborated on the proposition, and concluded that it "must weigh the necessity for an increase in

reserved and vested in the Commission notwithstanding any such arrangement and mutual agreement." (District of Columbia Code § 43-317, p. 1084.)

The majority opinion also stresses the "fairness" and "integrity" of the Commission. Fairness and integrity should at all times be assumed.

rates against the broad problem of adequate service." The facts in the record do not bear out any immediate danger to the rendition of adequate service by the gas company on account of difficulties in financing. The records in the cases involving applications for the issuance of preferred stock show that the Washington Gas Light Company is a holding company of gas companies in near-by Maryland and Virginia, and the company's need for financing is occasioned to a large extent by the need for expanding its plant to meet the growing demands for service outside of the District of Columbia. Had the company's return been computed solely on the equity of the common stockholders, with allowances for interest and fixed charges, there might have been room for the argument that an additional allowance should be made to attract new capital; not so, however, where the company is allowed a return not only on the stockholders' own investment, but also on the investment represented by other people's money, so that the common stockholder receives a return of 10 per cent on the market value of the stock. In such circumstances, to increase rates in order to attract additional investment would mean to charge the public with the cost of financing; in this case, it would mean to charge the District consumers with the cost of financing not only in the District of Columbia, but also in other jurisdictions. Such charges, in addition to a fair return on the property used and useful in the service within our jurisdiction, are bound to result in unreasonably excessive rates.

Our statute requires that the rates charged by any utility shall at all times be just and reasonable, and we must follow this precept laid down by the law. When we prescribe rates, whether that be under the sliding-scale plan or any other plan, we must bear in mind that we are fixing rates the people must pay for services which they cannot get elsewhere. It behooves us, therefore, to scrutinize carefully all facts pertaining to the rate-making process, lest the people be compelled to pay more than what is just and reasonable.

What is a just and reasonable rate? Under ordinary circumstances, it is a rate calculated to allow a fair rate of return to the utility on its investment. The fact that the Commission adopted a sliding-scale plan of rate determination, in no way diminishes our statutory obligation to weigh and consider all the facts or to prescribe rates which are just and reasonable.[8] That this was well recognized as part of the sliding-scale arrangement itself, is evident from the following language of the Commission when it adopted the sliding-scale plan:

"An administrative body such as the Public Utilities Commission cannot vest or divest itself of jurisdiction. . . . The Commission early recognized that if any such arrangement was to be of real value it should be sufficiently flexible in its provisions to

[8] Even if Par. 18 of our statute did not expressly reserve to the Commission the right to alter or amend all orders relative to rates, notwithstanding any arrangement or mutual agreement, and even if the sliding-scale arrangement did constitute an agreement, there would still be a question whether this Commission would have the authority to bargain away its power to fix just and reasonable rates. Freeport Water Co. v. Freeport (1901) 180 US 587, 599, 45 L ed 679, 21 S Ct 493.

meet changing conditions in such manner as to avoid injustice to the consumers or the companies and at the same time to permit timely benefits. To endure it must be susceptible of such modifications both as to substance and form as the facts or conditions from time to time may require."

There can be no conflict between the arrangement and the statute. Section 11 of Finding No. 2 of the arrangement itself provides that any interpretation of the arrangement, or any provision thereof, should be in conformity with the act, and that nothing contained in the arrangement should operate to the prejudice of any interested party under said act. It follows, therefore, that in the determination of what should, or should not, enter into rate making, the act, and not the arrangement itself, must govern.

There is another provision in our act which must prevail as against any formula adopted in the sliding-scale arrangement, and that is Par. 90[9] of the act under which this Commission is charged with the duty of enforcing the provisions of the Public Utility Law, "as well as all other laws relating to public utilities." This provision throws light on the question whether the sliding-scale arrangement must work equally "both ways," that is, whether there is to be a decrease or an increase in rates.

Having erroneously started with the premise that the sliding-scale arrangement is an "agreement" between the Commission and the company, the latter made a popular appeal to the effect that the sliding-scale arrangement should work both ways. The newspapers, both in their news and editorial columns, took up this cry and completely beclouded the issue, apparently on the theory that it is poor sportsmanship to have an agreement work one way but not the other.

I agree that a sliding-scale plan can be devised which, if properly applied, should work both ways *and in conformity with the act.* The present sliding-scale arrangement, however, cannot work *equally* both ways, if the act, and not the arrangement, is paramount. Under this plan, when the company during any test year makes excessive profits, there is conclusive evidence of the fact that the existing rates are unreasonably high, and they should be reduced. If, however, the formula under the sliding-scale arrangement shows that the rate during the test year did not reach 6½ per cent, then there is still a question whether the existing rates are unreasonably low or confiscatory, for it is well-established law that no public utility is entitled to an increase in rates unless the existing rates are confiscatory.

In this case, the company has not undertaken to show that the existing rates are unreasonably low. Not only has the company neglected to show that the existing rates are insufficient, but, on the contrary, the company asserted and insisted that it was not

[9] "Paragraph 90. That the Commission shall inquire into any neglect or violation of the laws or regulations in force in the District of Columbia by any public utility doing business therein, or by the officers, agents, or employees thereof, or by any person operating the plant of any public utility, and shall have the power, and it shall be its duty, to enforce the provisions of this section as well as all other laws relating to public utilities." (District of Columbia Code § 43–1002, p. 1100.)

seeking any increase in rates, as the following demonstrates:

Chairman Hankin: You are asking for an increase in rates under the sliding-scale arrangement?

Mr. Prettyman: No. The sliding-scale arrangement itself works automatically.

The entire case thus presents an anomalous situation. In ordering an increase, the Commission, in effect, says: The company does not want an increase; the present rates are not confiscatory; but we want the consumers to pay more than they do now merely because in 1935 our predecessors arrived at a formula according to which the public should now pay more.

The Administrative Procedure

When the sliding scale was adopted, $21,000,000 was set as the "initial rate base" as of June 30, 1935. Since then, the rate base has grown because of additions and betterments, until now the rate base is said to be $28,088,332 as of June 30, 1942. The adoption of the sliding-scale plan, however, did not absolve the Commission from its duty to determine rates upon a correct rate base or to correct any inflationary elements in the rate base already adopted. Recently, upon a reclassification of the company's accounts in accordance with the Uniform System of Accounts prescribed by the Federal Power Commission and this Commission, it became evident, upon the company's own showing,[10] that the rate base was inflated to the extent of $1,055,549.52, being the difference between the appraised value of the company's lands and their actual cost.

I, therefore, raised the question whether the rate base for the test year ending June 30, 1942, should not be diminished by this amount. The company moved to strike, arguing that the question was not within the "scope" of the present hearing, that at the present time the Commission was concerned only with the rate under the sliding-scale plan, and that the question as to the proper rate base might be taken up in some other proceeding. The Commission granted this motion.

Yet, how can any reasonable rate be determined without a correct rate base? Surely the sliding-scale plan does not contemplate that we multiply the errors of the past. If it does, then the plan is in direct conflict with our statutory duties, and, therefore, invalid. The answer is simple. Neither under the sliding-scale plan nor under any other plan of rate making can it be said that the correctness of the rate base is without the scope of the rate determination. In these circumstances, I am of the opinion that the rate base for the purpose of determining the proper rates under the sliding-scale plan should now be diminished by $1,055,549.52.

The ruling of the Commission sustaining the motion to strike the above question, as also its rulings in the course of the proceeding, sustaining objections to information sought by one of the Commissioners, raises a question by far more important than the amount at issue in this proceeding. It brings into issue the propriety of the proceeding itself. Is it within

[10] If the experience of other natural gas companies is a criterion, the Federal Power Commission will undoubtedly find additional items for disallowance from the cost claims of the Washington Gas Light Company.

the proper function of the Commission to rule out questions asked by one of the Commissioners?

When a question is asked by counsel, and objection is raised by opposing counsel, the objection is, in substance, an appeal to the Commission for a ruling that the information sought is irrelevant to the proceeding. If the Commission finds that the information is irrelevant, it sustains the objections. In practice, such objections are sustained in administrative proceedings only if it is evident that the information sought would not be relevant to any plausible theory upon which the case may be decided.

In a proceeding now pending jointly before the Federal Communications Commission and this Commission,[11] we find an excellent illustration of this rule of admissibility of evidence in administrative proceedings. There I suggested an interpretation of a provision in the Federal Communications Act which, if adopted, would make a large part of the respondents' testimony irrelevant to the determination of the case. The respondents argued for a different interpretation. When the respondents introduced voluminous evidence based on their interpretation of the statute, counsel for the Federal Communications Commission moved to strike, and, on my own suggestion, the objection was withdrawn.[12]

If there is among the Commissioners one who deems the information relevant, then such objections are overruled as a matter of course. Where the information is sought by one of the Commissioners, an objection to the question is *out of order*, for to sustain the objection would mean to interfere with the function of the Commissioner to weigh the facts in accordance with the theory of the case which he deems applicable. Referring again to the telephone case now pending before the Federal Communications Commission and this Commission, the respondents indirectly objected to a question asked by one of the Commissioners, and Commissioner Walker, who was the chairman of this joint proceeding, said: "Well, you are in effect raising a query as to the right of a member of the Commission to ask questions." The objection was not even entertained.

This is the correct procedure in administrative proceedings in general. Under our statute, such procedure is imperative. Paragraph 97(b)[13] provides that "any investigation, inquiry, or hearing within the powers of the Commission may be made or held by any Commissioner." Under this provision, no question asked by a Commissioner can be ruled out as irrelevant, unless the question falls beyond the scope *of the powers* of the Com-

[11] Re Telephone Charges of Hotels, Apartment Houses, and Clubs on Interstate and Foreign Telephone Communications. F.C.C. Docket No. 6255, P.U.C. Formal Case No. 311.

[12] [Transcript of testimony omitted.]

[13] "Paragraph 97(b). A majority of the Commissioners shall constitute a quorum to do business, and any vacancy shall not impair the right of the remaining Commissioners to exercise all the powers of the Commission. Any investigation, inquiry, or hearing within the powers of the Commission may be made or held by any Commissioner, whose acts and orders, when approved by the Commission, shall be deemed to be the order of the Commission. The Commission shall have power to adopt and publish rules and regulations for the administration of the provisions of this section, including the conduct of its investigations, inquiries, hearings, and other proceedings." (District of Columbia Code § 43-202, p. 1078.)

mission itself. In this case, the Commission undertook to rule that certain questions fell beyond the "scope" of the proceeding. One of these questions related to the correctness of the base upon which the rates were to be computed. Surely it cannot be said that the correctness of the rate base in a rate-making proceeding falls beyond the powers of the Commission itself. And if it cannot be said that the inquiry falls beyond the powers of the Commission, the ruling constitutes a flagrant interference with the statutory powers and duties of the Commissioner who seeks to ascertain the correctness of the rate base.

In support of the Commission's rulings sustaining objections to questions asked by one of the Commissioners, the company relied on the opinion of the Federal Power Commission, Re Hartford Electric Light Co. (1941) 44 PUR(NS) 515, in which that Commission had ruled that it was not necessary to make a finding based upon a theory of the case which the Commission had rejected. I am in thorough agreement with that ruling. The ruling of the Federal Power Commission in this regard, however, is a far cry from saying that the only evidence admissible is that which is necessary for the decision of the case upon the theory finally adopted. As a matter of fact, in the Hartford Case, *supra,* itself some 1,100 pages of testimony were introduced by counsel for the Hartford Electric Light Company, who is also the general counsel of the Washington Gas Light Company, and the evidence was admitted on a theory which counsel for both the company and the Commission later realized was not necssary for the decision of the case.

Proper administrative and judicial procedure, alike, require that a case should not be prejudged. If, upon any plausible theory, certain facts are relevant, they should be admitted, especially if one of the Commissioners deems that theory of the case applicable.

If, as it appears in this case, a Commission may rule out questions asked by a minority Commissioner, it follows that he may bring out only those facts which are acceptable to the majority, but no others; he may dissent on abstract questions of law, but not on matters of law which require a factual foundation. The Commission may as well tell him "to go home" and not participate in the hearing at all. In these circumstances, it may fairly be said that if the information sought would be of benefit to the company, the exclusion of the information deprives the company of a full and fair hearing; if the information sought would be of benefit to the ratepayers, then the exclusion of the information deprives the ratepayers of a full and fair hearing.

As a matter of fact, as the proceeding has developed, neither the evidence nor the decision was limited to those questions which fell within the "scope" of the proceeding, as defined in the ruling of the Commission, when it excluded questions concerning the rate base.

The Commission excluded excess profits taxes in the amount of $43,928.02, also $115,863.09 which are said to be abnormal income taxes due to the present war conditions. There is no provision in the sliding-scale ar-

rangement for the elimination of any taxes[14] (a view apparently taken by the Commission in the course of the hearing), unless the words "reasonable accruals of taxes" are interpreted to mean that only such taxes may be deducted from gross revenue as are "reasonable" for rate-making purposes,[15] rather than taxes which may reasonably be expected to accrue.

In connection with the argument that it would be unfair to charge the consumers with the excess profits taxes imposed on the company, the present chairman, himself, suggested a plan for consideration at the hearing, whereby the company, upon receiving an increase in rates, would refund to its customers such part of the increase as might result in excess profits taxes.[16] One will search in vain the sliding-scale plan for a proposition of this character.

The Administrator of the Office of Price Administration was permitted to intervene in this case. Among the evidence presented by the intervener were facts relating to the reasonableness of deductions for war time taxes in computing the net operating income, and facts relating to the amount allowable for depreciation. That was objected to by counsel for the company on the ground that the evidence was beyond the "scope" of the proceeding, and the Commission sustained the objection. But when the company, after reconsideration, withdrew its objection, the evidence was admitted.

It would thus appear that the rulings on admissibility of evidence were not based on any well-defined concept of what constitutes the "scope" of the hearing, but depended largely on whether the majority of the Commission and the company were willing to have the evidence admitted. The rulings made by the Commission, together with the circumstances attending the entire proceeding,[17] leave no doubt that the public had not been

[14] The sliding-scale arrangement provides for the following method of computing the net amount available for return: "Having determined the rate base for a particular adjustment date, the Commission shall next determine the net amount available for return for the test year by deducting from the gross operating revenue (§ 4) of the companies the adjusted operating expenses (§ 5) for the test year, the accruals for retirement reserve (§ 8), reasonable accruals for uncollectible bills, and reasonable accruals for taxes; . . ."

[15] I think this is the only proper meaning of the phrase "reasonable accruals of taxes."

[16] More will be said about this plan later in this opinion.

[17] (a) In the course of the hearing, counsel for the company assumed to dominate the proceeding, even to the extent of attempting to annoy and order about counsel for the intervener as to the manner in which he should conduct his case. No attempt was made by the present Chairman of the Commission to correct counsel for the company. Finally, I was compelled to inform counsel that the Commission, and not the company, was conducting the hearing.

(b) In the course of my cross-examination of the company's witness concerning the plan suggested by the present chairman, whereby the company might return part of the increased rates in order to avoid payment of excess profits taxes, some of the officers of the company resorted to loud laughter, and thus interfered with the cross-examination. Nothing was done by the Chairman of the Commission to correct such conduct on the part of participants in the proceedings.

(c) It was evident throughout the hearing that my questions were resented both by the Commission and the company. Toward the end of his examination, the company's principal witness made no attempt to hide his contumacious conduct. As was correctly reported by the Evening Star, September 12, 1942, "during the late afternoon, he (the company's witness) displayed considerable annoyance over the continued Hankin attack, at times turning his back and shouting answers over his shoulder." Nothing was said or done by the present Chairman to correct such conduct on the part of the witness.

given a full and fair hearing. It can, in no sense, be described as a judicial proceeding.

At the conclusion of the hearing, counsel for the Office of Price Administration, as also other interveners (Washington League for Women Shoppers and the Fort Davis Citizens' Association) petitioned that the proceeding be reopened in order to permit a full hearing on all elements entering into the rate determination. The petition was denied. In view of the above, I think that the denial of the petition constituted reversible error.

The decision of the Commission was not based on deliberations by the Commission. I am not aware of a single meeting or conference held to discuss the many questions of fact and law involved in the case, except the applicability of the Act of October 2, 1942, "To Amend the Emergency Price Control Act." According to the procedure adopted [18] by the Commission in cases where there is a division of opinion, the majority opinion and order must be submitted to the minority member; if he writes a dissenting opinion, it is submitted to the majority so that they might have an opportunity to amend the majority opinion; the minority member then has an opportunity to amend his opinion; then the majority and minority opinions, together with the order, may be issued. In this case, the majority opinion was submitted to the minority member on October 9th, in draft form. This was superseded by a draft dated October 12th, in which there were many material changes. The order was submitted for the first time, in final mimeographed form, on October 13th. On the same day, the Commission decided to issue the opinion and order without giving the minority Commissioner an opportunity to prepare his dissent. There was thus no opportunity for deliberation or discussion by the Commission prior to the decision of the case.

Operating Expenses

In the days when rate making was full of speculation, due to the supposed constitutional necessity of arriving at the reproduction cost value of utility property, the regulatory agencies had a sufficiently difficult task when they concentrated their attention on the rate base. The Utility Commissions generally accepted the

(d) At one time, after I directed some questions to the Commission's chief accountant, the following appears in the record (p. 623):

Chairman Flanagan: Mr. McElfresh, did you make that calculation in furtherance of your investigation of these accounts and allocations as an accountant?

Mr. McElfresh: No. I did not, sir.

Commissioner Hankin: In what capacity did you make that calculation?

Mr. McElfresh: I made it at your request.

Commissioner Hankin: As chief accountant of the Public Utilities Commission, or someone I met on the street?

Mr. McElfresh: As chief accountant of the Public Utilities Commission.

Thus the implication of the present chairman's question seems to be that information furnished by the chief accountant to support the view of the majority is properly the information of an accountant. But when he furnishes information in opposition to that view, though requested by one of the Commissioners, he is not even acting in the capacity of an accountant.

[18] "The following agreement was reached covering procedure in cases of disagreement between Commissioners prior to the issuance of orders or opinions:

"Draft of the majority opinion and order will be submitted to minority member and will not be issued, until minority opinion draft has been served on majority members. Majority opinion and order may then be modified, and if the minority opinion is not modified, both will be issued simultaneously."
(Minutes of the Commission, March 3, 1942, p. 2161.)

companies' figures relating to operating revenue, and very little was done by way of scrutinizing the operating expenses. Recently the Supreme Court held[19] that the Constitution does not bind rate-making bodies to the reproduction cost theory. No longer can regulatory agencies insist that they are compelled to compute rates upon an inflated rate base, and that they are required to do so by decisions of the Supreme Court.

There can also be no doubt that the proper basis for determining a reasonable return upon the property invested is the amount of the actual investment, which is the actual legitimate original cost of the property,[20] not the reproduction cost of something which probably is not reproducible. The determination of the actual cost of propetry is a task insignificant compared with that involved in determining value on a reproduction cost basis. With this major task in rate making reduced to mere auditing, it behooves regulatory Commissions to turn their attention to the other significant elements of rate making, namely, the deductions from gross operating revenue and what constitutes a reasonable rate of return.

A public utility, which is entitled to a reasonable return, computed by *net* operating revenue, is under a constant duty to operate as ecomonically as possible, and it is the corresponding duty of the regulatory agency to allow as deductions from gross operating revenue only such expenses and such other charges as are incurred for the benefit of the public, not for the benefit of anyone else. This rule is often stated in somewhat different language. It is said that a utility is entitled to a recoupment of all its operating expenses, provided they are reasonable. There is also a rule, however, that since the public utility is a private corporation, the regulatory agency should not interfere with the managerial functions of the directorate of the corporation. Adding these two propositions together, it has been argued that all expenses incurred must be allowed, unless it be shown that the directors have acted in disregard of their duties, for the reasonableness of the expenses depends largely upon the judgment of the directors, and to disallow expenses as being unreasonable would constitute an interference with the managerial functions.

The fallacy of the argument lies in adopting the psychological processes of the directors, that is, their *judgment,* as the test of reasonableness. What has been the practice of the directors heretofore, and what is the practice of directors of other utilities, are questions which hardly furnish a proper test of reasonableness. They are tests which, of necessity, impinge upon the managerial functions of the directors of the corporation.

In this case the Commission adopted a different and rather novel test of reasonableness, namely, the judgment of the Commission's witness. For example, with reference to an adjustment made by the company in computing salaries and commissions chargeable to sales promotion expense; the Commission, after describ-

[19] Federal Power Commission v. Natural Gas Pipeline Co. (1942) 315 US 575, 86 L ed 1037, 42 PUR(NS) 129, 62 S Ct 736.

[20] Re Chicago Dist. Electric Generating Corp. (Fed PC 1941) 39 PUR(NS) 263; Detroit v. Panhandle Eastern Pipe Line Co. (Fed PC 1942) 45 PUR(NS) 203.

ing the method used by the company, said, "and since this is the method used by the Commission's witness, we think the adjustment is proper." [21]

If the Commission is to avoid interference with managerial functions in this regard, it must apply tests of reasonableness which are objective and which are not a function of the judgment of the directors. In determining whether the amounts claimed as operating expenses are properly deductible from gross revenues, we must inquire: (1) Are any of the expenditures contrary to law or to the Commission's rules and regulations; if they are, then they are unreasonable per se; and (2) If the expenses do not, on their face, contravene the Commission's rules and regulations, they must, nevertheless, be scrutinized as to whether they are incurred for the benefit of the consumers, and if so, to what extent. Superimposed on these two tests is the proposition that the quantum of proof as to reasonableness is not the same as to all types of expenditures. For example, there is a difference between the proof necessary to establish reasonableness of capital expenditures and that necessary to establish reasonableness of operating expenses. In the former case, the company spends its own money, and it may well be assumed that a utility will not incur unreasonable costs. Therefore, such expenditures need not be deemed unreasonable, unless they are excessive and perhaps raise a presumption of gross neglect, collusion, or fraud.[22] In the case of expenses incurred by the company as operating expenses, outlays which the company is entitled to recoup before the rate of return is computed, the situation is entirely different. Here the company is actually spending *other people's money,* and it is so easy to be liberal with expenditures when someone else has to foot the bill.

This is illustrated by the facts of this very case. In the 1941 proceeding, it appeared that the company contributed about $1,200 to the Greater National Capital Committee, and claimed the amount as an "expense." The claim was disallowed. This year the contribution to the committee was only $85. How easy it would have been for the company to contribute $1,200, if the consumers of the District of Columbia were made to reimburse the company! How quickly the directors of the company decided that only about $100 would constitute a reasonable contribution, when they found that they had to dig into the company's own coffers!

With these considerations in mind, let us look into the company's operating expenses.

Expenses Contrary to the Commission's Rules and Regulations.

Donations

Under our Uniform System of Accounts, donations do not constitute operating expenses and must be charged to Account No. 538—Miscellaneous Income Deductions. Pursuant to this requirement, charitable contributions had been excluded from operating expense. Nevertheless, the

[21] The Commission made no findings of fact which would lead to the conclusion that the expenses allowed are reasonable.

[22] Re Pennsylvania Power & Light Co. (Fed PC 1942) 44 PUR(NS) 344.

company included in its operating expense a number of donations, among them being a contribution of $1,250 to the United Service Organizations and $85 to the Greater National Capital Committee. These two items were disallowed by the Commission. I agree in the disallowance, but prefer to state my own reasons, because they are illustrative of the reasons for disallowance of additional amounts which the Commission has failed to disallow.

The company argued that the contribution to the United Service Organizations should not be eliminated from operating expense, because this is not a charitable, but a military or a patriotic, contribution; that it is entirely a question of policy whether the United Service Organizations should obtain small contributions from large numbers of persons or should look to large contributions from a few. In making this argument, the company overlooks the essential principle behind the ruling that charitable contributions may not be charged to operating expense. They are not excluded from operating expense because they are charitable, but because they are contributions. No matter how laudable the purpose, a contribution or a donation is not an expense incurred for the benefit of the consumer in the service rendered by the company.

In disallowing this item, we do not interfere with the judgment of the directors of the company. On the contrary, we may applaud such contributions and encourage even greater contributions. But we have no right to permit the company to be magnanimous at the expense of the public. We have no right or power to appoint the company as an agency for the collection of charitable or patriotic donations, and we have no right to require the public to contribute for charitable or patriotic purposes, either directly or through the Washington Gas Light Company.

As to the contributions to the Greater National Capital Committee, the company stoutly maintains that this is not a donation at all, but an "expense" incurred in order to promote the sale of gas, which is to the benefit of the consumer. The conclusion is rather far removed from the premise. The argument runs as follows: The Greater National Capital Committee sponsors conventions; conventions bring people to Washington; their activity in the District makes them hungry; when they get hungry, they eat in restaurants; the restaurants must cook food, and in doing so, must burn gas; the gas is supplied by the company; the more gas sold, the less the cost to the consumer. *Ergo,* a contribution to the Greater National Capital Committee is an operating expense incurred for the benefit of the consumer. A better *Rube Goldberg cartoon* could not have been devised! By a parity of reasoning, any contribution for any purpose can be shown to inure to the benefit of the consumer. Such explanations of contributions as operating expenses do not constitute proof, but, on the contrary, cast doubt on the validity of the company's explanations for the treatment of other contributions as operating expenses.

In addition, the company included the following items in operating expenses: Tickets to police and fire outing—$10; tickets to police and fire field day—$30; tickets for representa-

tives of the company to a dinner to the retiring superintendent of police—$50; total—$90. The company was quite ready to defend these as items of operating expense, but, upon the suggestion of the present Chairman, the company conceded these items as being improper. Since the amount at issue is small, I should not have raised these questions, except for the fact, already mentioned, that none of the Commissioners had, prior to the hearing, any opportunity to go into the accounts, and the Commission's staff merely echoed the explanations given by the company. The important thing about these three items is not the amount involved, but that there is no telling what might have been found in the accounts, had they been carefully analyzed.

The company also contributed $1,668.30 to the Institute of Gas Technology in Chicago. It explained that this was an operating expense, because the Institute may train persons who may be helpful to the gas industry, that thereby this company may be benefited, and consequently the consumers in the District of Columbia may be benefited. These problematical benefits for the consumer are much too far removed from actuality to treat the contribution as anything more than a donation to an educational institution.[23] Donations are no less gifts if the purpose is charitable, patriotic, educational or otherwise.

[23] The Commission made no finding as to this contribution, but apparently allowed it as "reasonable."

Services on Customers' Premises

Included in operating expenses is the sum of $440,814.81, representing Services on Customers' Premises—Account No. 769. Of this amount, $389,098.33 has been allocated to services rendered in the District of Columbia. The items constituting this amount do not correspond to any items prescribed in Account No. 769, such as, improving character of service; inspecting, testing, or adjusting customers' equipment; inspecting premises; investigating and adjusting service complaints; or installing, removing, and renewing gas lights. The items constituting this amount bear all the earmarks of merchandising and jobbing,[24] with nothing to show that the company has given any heed to the instruction in Account No. 769 that expenses incurred in connection with merchandising, jobbing, or contract work should not be included in this account.

[24] They are:

Refrigerators	$60,424.50
Householding appliances	167,441.47
Householding appliances—Utilization Dept.	1,727.08
Commercial appliances	33,697.68
Commercial appliances—Utilization Dept.	59.14
Commercial appliances—Government Sales Dept.	442.92
Other appliances and miscellaneous (ranges and water heaters)	135,518.60
Other appliances and miscellaneous (ranges and water heaters)—Utilization Dept.	25.38
Maintaining Installations	41,478.05
Distributed to Washington Gas Light Company of Montgomery County, Maryland	(51,716.48)
	$389,098.33

In order to prove that the costs were not incurred in connection with the company's appliance business, its witnesses testified that the expenses represented services rendered alike to all customers having these appliances, not merely those who purchased appliances from the Washington Gas Light Company. When asked for a breakdown of these services as between customers who purchased their appliances from the company and other customers, the company would not submit such breakdown, claiming that its service accounts are not so classified as to make such a segregation practicable. In the light of this fact, the entire sum of $389,098.33 should be disallowed, for want of proof that the items included constitute services other than those rendered in connection with merchandising and jobbing.

It is not necessary, however, to rest the disallowance on this ground alone. Section 8 of Order No. 2098, dated August 26, 1941, provided that "all piping, fixtures, and appliances on the customer's side of the meter shall be installed and maintained under the responsibility and at the expense of the customer or owner of the premises." Under this provision, it matters not whether the work was done for the customers who had purchased their appliances from the company or for other customers. None of the work on the appliances was chargeable to the ratepayers, whether the work properly belonged to merchandising and jobbing, or otherwise.

The company sought to distinguish between servicing and maintaining appliances. If you put an appliance in proper working condition, it is rendering service; if you have to use new parts, you maintain the appliances, the company's witnesses said. It will be noted that one of the items is "maintaining installations — $41,478.85." Even this, according to these witnesses, did not fall within the requirement that piping, fixtures, and appliances shall be "installed and maintained . . . at the expense of the customer." In presenting these arguments by way of testimony, the company is, in effect, asking us to distinguish between Tweedledum and Tweedledee. The words used in § 8 are clear. To install means: "To set or fix in position for use or service: as, to install a heating or lighting system." To maintain means: "To hold or keep in any particular state or condition; esp. in a state of efficiency or validity."[25] In order to keep a refrigerator, a house-heating appliance, or a range in a state of efficiency, in other words, *in order to maintain it,* it may be necessary to adjust parts or make repairs with or without any parts. The distinctions sought to be established by the company have no foundation, either in fact or in reason.

The company further argued that to charge these services to individual customers might result in disaster. People would undertake to adjust their own appliances, and the results would be explosions, fire, conflagration, asphyxiation, etc. The argument is too ridiculous to be entertained. It may as well be argued that the company should be called upon whenever it is necessary for a housewife to light the oven, for it may happen that she may turn on the gas, fill the room with it, and then strike a match, caus-

[25] Webster's New International Dictionary.

ing the entire room to explode. Undoubtedly, such accidents might have happened, but we live in an age when daily we use mechanisms which are by far more hazardous than a gas appliance. At any rate, the argument has no validity as against the provision of § 8 of Order No. 2098.

The same may also be said about the company's argument that it is necessary or desirable to charge these services to the ratepayers in general, as part of the company's effort to promote the use of gas. This may be an argument for the elimination of § 8, but by no means an argument for charging all the ratepayers with what should have been charged to the particular customers. The company is not at liberty to disregard the Commission's order merely because it thinks it can promote the sale of gas better by what has the appearance of "free service." There was a good reason for the inclusion of § 8, and that is the requirement that the service rendered by the company be as inexpensive as possible. If this service is not rendered "free," then there will not be as many calls upon the company. The particular customer served may have to pay a small part of the $400,000, but the greatest part of this sum will not be reflected in the rates charged to all consumers. If the company is anxious to promote the use of gas, it may consider doing so by lowering expenses, rather than by raising them.

Nothing was said by the Commission in support of its allowance of these $389,098.33.

Promotional Expenses

Included in operating expenses are items totaling $243,420.50 [26] under the heading of "Sales Promotion Expense," of which $27,348.23 has been disallowed by the Commission. I think that the remainder, $216,072.27, should also be disallowed. Our Uniform System of Accounts permits promotional expenses, but there are two limitations, first, the promotional expenses must be incurred for obtaining *new* business, and second, the accounts relating to sales promotion expenses (Accounts Nos. 785 to 787) must not include costs incurred in connection with merchandise or appliance sales.

The company's witnesses admitted that in making these expenditures no distinction could be made between old and new business, and that all gas promotional expenses were incurred generally for the purpose of promoting the sale of gas. Yet, there is good reason for the distinction made in the Uniform System of Accounts between expenditures incurred in order to keep old customers and those made to get new customers. The former may not be included in operating expense, although the latter may. To charge to promotional expense the amounts spent for keeping old customers from going into the use of a competitive service, like that of the electric company, really means that the utilities get the consumers "coming and going."

[26] The items are as follows:

Supervision	$83,577.50
Salaries and commissions	92,901.74
Demonstration	20,840.46
Advertising	49,794.81
Miscellaneous sales expense	27,636.37
Distributed to Washington Gas Light Company of Montgomery county, Maryland	(31,330.38)
	$243,420.50

As the Illinois Commerce Commission said:[27]

"It is the opinion of this Commission that the householder in Chicago should not be called upon to pay in his rates for gas services, the costs which the company may incur to hold his business, and also to pay in his rates for electric service the cost which the electric company may incur in an effort to take that business away from the gas company. The stockholders of the company may permit the management to incur expenses to retain such business as it shall see fit, but they cannot look to the ratepayer to reimburse them for such expenses."

There is another reason why promotional expenses to keep old customers are not a proper charge against the consumer. Such promotional expenses are really expenses incurred to keep the customers' good will. If these expenditures are charged to the consumers, then it, in effect, means that the consumers are made to pay for their own good will. It has already been established that utilities are not entitled to increased rates based on the value of customers' good will included in the rate base. The inclusion of such promotional expenses in operating expense is another way of accomplishing the same forbidden result.

In view of the fact that the promotional expenses were incurred for the purpose of promoting the sale of gas generally, and not merely for the purpose of obtaining new business, this item should be disallowed for want of proof showing what part of the expense, if any, was incurred for the purpose of getting new business.

But there is still another reason why this item of sales promotion expense should be disallowed. This, like the one pertaining to service on customers' premises, does not conform to the instructions in the Uniform System of Accounts that expenses incurred in connection with merchandise or appliance sales should not be included. The company did make a general allocation of some of the items, between merchandise and jobbing, on the one hand, and sales promotion expense on the other. The division was 20 per cent for the former, and 80 per cent for the latter. The company made that division on the basis of their best considered judgment, but they could produce no facts upon which that judgment was based. In fact, the attitude of the company is—this is our opinion, and that is all there is to it.

Under the Uniform System of Accounts, merchandising, jobbing, and contract work must be included in Account No. 789 of the operating expense accounts, if the state's statutes or orders of the Commission having jurisdiction over the utility permit income to be reported as an operating expense item. Otherwise, such expenses must be reported in Account No. 520, as nonoperating expenses. This matter had an interesting history in the regulation of the gas company by this Commission.

Prior to 1931, the company, in accordance with the system of accounts then in effect, treated its appliance business as part of its utility business and charged both the income and expense to operating revenues and ex-

[27] Re Peoples Gas Light & Coke Co. (1937) 19 PUR(NS) 177, 265.

penses. The appliance business was operated at a loss, and the loss was charged to the consumers, on the theory that these losses constituted legitimate promotional expenses. On March 12, 1931, the Commission issued Order No. 900, PUR1931B 436, 437, in which it held that the cost of handling, displaying, and marketing appliances should not be borne by the consumers as a whole, nor taken into consideration in arriving at any rate to be charged for gas service. After providing how the revenues shall be treated in the new account set-up, and after directing that the cost should be charged to this account, the order specifically provided:

" 'This account shall also be charged, with the compensation of *all* employees engaged in the purchase, *sale,* delivery, installation, displaying, demonstrating, and marketing of merchandise or of jobbing or contract work, *to the extent* that such employees are so engaged, together with *supervisory* expenses incident thereto, *all advertising* of such merchandise or work and expenses incident thereto, rental of display rooms, showrooms and warehouses, either in rented quarters or in property owned, to the extent that such quarters are used for the merchandise and jobbing departments, the cost of house services associated with the use of space for such purposes, the compensation of employees engaged in billing, collecting, and keeping the records associated with the merchandise and jobbing department, to the extent that they are so engaged, the costs of adjustments of merchandise incident to its installation and conditioning for use, the cost of making good any guaranty of merchandise or jobbing work, the cost of removing and reconditioning repossessed merchandise, and *all other expenses incident to or connected with the merchandise and jobbing department* not provided for in the foregoing.' " (Italics supplied.)

By Order No. 1846, dated January 11, 1940, adopting the Uniform System of Accounts prescribed by the Federal Power Commission, the Public Utilities Commission rescinded Order No. 900, and adopted the text of Income Account No. 520, and further provided that the list of items set out under Account 789 shall be applicable in governing the charges and credits to be made in Account No. 520. The items in Account No. 789 are substantially the same as those included in the above-quoted language of Order No. 900, and, in rescinding this order, there was no intention to vary the substance of what should be included as expenses in Account No. 520.

It will be noted that Order No. 900 provides that *all advertising* of merchandise shall be excluded from operating expense. Account No. 789 includes, as its first item, *advertising in connection* with the sale of merchandise. A mere glance at the book of advertising submitted by the gas company showed advertisements of merchandise, or in connection with the sale of merchandise, and the company's witnesses testified that only a part of such advertising was allocated to merchandise and jobbing. It is evident that the company followed neither Order No. 900 nor the Uniform System of Accounts in the treatment of advertising. The company argues that the Uniform System of Accounts does not preclude allocations of ex-

pense as between various items of account. That undoubtedly is so. But while some items may be allocated others may not. Assuming that all items are subject to allocation, there must, nevertheless, appear some basis for allocation rather than the mere opinion or judgment of the company.

It is not necessary to burden this opinion with illustrations of the fact that the other items included in Sales Promotion Expense are subject to the same deficiencies. For example, there is nothing to show that the item of supervision—$83,577.50—actually related to the cost of supervising and directing the sales department and the solicitation of new business; there is nothing to show that the salaries and commissions ($92,901.74) were paid for canvassing and soliciting new business; there is nothing to show that demonstrations ($20,840.46) has nothing to do with the cost of employees engaged in selling merchandise and appliances; and there is nothing to show that the miscellaneous sales expense ($27,636.37) included only the cost of labor and materials used and expenses incurred in soliciting new business. There is nothing to show that any of these items excluded the 17 items set forth in Account 789.

The Commission made no findings in respect of all these questions. It did recognize that the company had not made a sufficient showing. With reference to the items for advertising it said: "The fact that the company segregates appliance advertising from its other or institutional advertising might of itself be sufficient grounds for saying that all of such advertising relates entirely to the merchandising activities of the company." Why did not the Commission so hold? What are the counter-balancing reasons? One finds only this: "However, in view of the practice of participating in advertising campaigns of other dealers we will go no further than the adjustment made by the Commission's witness." And now one may continue to wonder what connection there is between the company's practice and the requirements of our system of accounts, and whether the Commission has surrendered its function of judicial determination to its witness.

In view of the above, I think that the entire amount of sales promotion expense should be disallowed.

Expenses Not for the Benefit of Consumers

The above items claimed as operating expense should be disallowed because they do not comply with the Commission's accounting orders, rules, or regulations. The reverse does not follow. The mere fact that items of expense do fall within the operating expense classification of the System of Accounts does not mean that they should be allowed. The question still remains whether the claimed items of expense are incurred in the service of the public, and to what extent. To hold otherwise would mean to reduce the rate-making function to mere bookkeeping and to surrender this judicial function to the accountants.[23] No system of accounts

[23] This is a complete answer to the reasoning of the majority that all the operating expenses, except those disallowed have been recorded in accordance with the Uniform System of Accounts and that they are "fair and reasonable and properly considered in the determination of rates under the sliding-scale arrangement."

has been devised, nor will a system of accounts probably ever be devised, which will distinguish between expenditures incurred for the benefit of the consumers and those incurred for the benefit of the corporation's stockholders. For this reason, we must weigh the items of expense to the end that the consumers should not be required to pay for something which does not represent a service to them, but a service to others.

Association Dues

This is illustrated by the inclusion of association dues in Account No. 801 — Miscellaneous General Expenses. Does the inclusion of association dues mean that the ratepayers may be charged with whatever dues the company chooses to pay, whether that constitutes a service to them or otherwise? I think not. For example, it would be unthinkable to allow as operating expense dues or other contributions made to political organizations. It follows that only such association dues may be charged to the consumers as are of benefit to them in the service rendered by the company.

The company is a member of the American Gas Association and pays annual dues of about $6,000. It may be assumed, for the purposes of this proceeding, that this is a proper item in operating expense. But the company has also charged to operating expense dues to the American Management Association ($100), dues to the United States Chamber of Commerce ($150), dues to the Merchants and Manufacturers Association ($150), and dues to the Better Business Bureau ($225). How do these payments result in improved gas service to the public? The record does not show to what extent this company is actually benefiting from membership in these organizations. This, however, is a minor phase of the problem. The more immediate and important question is: To what extent is the *ratepayer* benefiting from the fact that the Washington Gas Light Company is contributing to the support of these organizations? When such expenditures are incurred, and they are brought into issue, the burden is on the company to show the extent, if any, the ratepayer is benefiting from these expenses. The record has not developed these elements of fact. No showing was made by the company, apart from its general claim that the company gets "industrial information" from these organizations. If this is the entire justification for the treatment of dues as expenses, it is my opinion that they should be disallowed.

It is not for us to bear the burden of proof and to seek out information why dues or other contributions to various organizations should be disallowed from operating expense. However, in the brief time at my disposal, I did have occasion to look into two items of dues paid out by this company—dues to the National Association of Manufacturers ($100) and a contribution to the National Industrial Information Committee ($250). Here also, the company's evidence in support of these expenses consisted merely of a statement that "they disseminate information of value to the industry generally." This is hardly a reason for making a contribution and charging it to the ratepayer, even if

the organizations did actually furnish *information*. However, the National Association of Manufacturers and its Committee on Industrial Information had figured very prominently in the investigation made by the Senate Committee on Education and Labor, pursuant to S.R. 266 of the 74th Congress, concerning violations of the right of free speech and assembly and interference with the right of labor to organize and bargain collectively. In his report concerning the National Association of Manufacturers (Report No. 6, Part 6, 76th Congress, 1st Session), Senator LaFollette said (page 154):

"The National Association of Manufacturers had opposed the principal legislative measures sponsored by the national administration during the congressional session of 1935. It had opposed the National Labor Relations Act, the Social Security Act, the Banking Act, the Utility Holding Company Act, and the President's tax program. In spite of the association's opposition, all these measures became law. This was a great blow to the association; but its officers remained undaunted and they redoubled their propaganda efforts. The program of 'education' that was initiated in 1933 and 1934 now became its principal weapon of defense for the status quo and it was carried forward with mounting intensity. . . ."

In Chap. 5 of Part 6 of his report, Senator LaFollette analyzes the nature and techniques of the association's propaganda material. There is no doubt in my mind that the association was not one engaged in disseminating industrial *information* for the purpose of improving the gas service to the public, but was and is a *propaganda organization* for the purpose of disseminating a point of view on industrial relations.

There should be no objection on the part of this Commission to contributions by the company, even for such purposes. In other words, we need not interfere with their managerial judgment. But the company should not be made a vehicle whereby the ratepayer would be compelled to pay for the upkeep of such propaganda.

In view of the above, the dues and contributions to various organizations should be disallowed in the sum of $975.[29]

Salaries

One must not forget that a public utility is engaged in a service to the public. While it has often been said that the persons engaged in such public calling cannot serve two masters at the same time, the fact remains that the officers and executives of the corporation do serve both the public and their stockholders, and very often the interests they serve are in conflict. When the executives and other officers find themselves in this dual service, it is reasonable that, in so far as the service is rendered to the public, the ratepayers should pay for it; in so far as it is rendered to the stockholders, the latter should pay for it. Of course, it is not possible to apportion with any degree of accuracy how much should be paid by the ratepayers and how much by the stockholders. Nevertheless, there are bases of comparison which give a proximate idea of the amount which the public usual-

[29] The Commission made no findings as to these disputed items, but allowed them as "reasonable."

ly pays for services requiring similar amounts of ability and effort.

The testimony introduced by the company was limited to the fact that the salary of the president during the year was $31,666.50;[30] the salary of the vice president and general manager was $18,000; that of the vice president and treasurer $15,000; that of the assistant vice president $8,800; and that of the general counsel $18,000 and that these salaries were set by the board of directors. The contention is that the Commission may not disallow any part of these expenses, unless the board of directors had acted in an arbitrary or unreasonable manner; otherwise, we should be interfering with the managerial functions of the corporation.

As has been stated, it is not necessary to interfere with the managerial functions of the corporation in order to ascertain the reasonable amounts which the public should pay for the services of the officers and executives of the corporation. It may be assumed that the directors acted in full compliance with their duties as directors in voting such salaries to these officers. It may even be assumed that the value of their services is many times what is actually paid to them. The pertinent questions are: Whom are these men serving? To what extent should the consumers of gas be required to pay for such services? Assuming that these officers and executives devote full time in behalf of the consumers, what are the comparable salaries which the public pays for similar services? Is it conceivable that the services rendered by the president of the company are worth to the public more than one and one-half times as much as those of a Justice of the Supreme Court of the United States; or more than twice that of a cabinet officer; or more than three times that of a member of Congress; or more than three and one-half times that of a Commissioner of the District of Columbia? Is there any comparison in the amount of knowledge, ability, work, and effort required, between the position of the president of the Washington Gas Light Company, and these other positions of public service? Why should the public be required to pay $32,500 for the services of the president of the company merely because the payment is made through a public utility corporation rather than through a governmental agency?

These questions have never been answered in the record. I think that the answer lies in the proposition that, when the public pays for a public service, it should not be required to pay more than for comparable public services. If the directors of the corporation, within their judgment and discretion, think that they should pay much higher salaries, they may do so in the interest of the stockholders, but we should not permit such salaries to be charged to the public.

What are the comparable public services in this jurisdiction? The position of public service in the District of Columbia most comparable to that of the president of the Washington Gas Light Company is that of the head of the water department of the District of Columbia. He receives a salary of $5,600 per year. True, his work is generally supervised by the engineer commissioner of the District of Columbia, but the latter receives a salary

[30] On the basis of $32,500 per year.

of only $9,000 per year. If we allow, as the public's part of the salary of the president of the Washington Gas Light Company, as much as $10,000 per year, no injustice can possibly result. Similarly, the public's share of the salary of the vice president might be put at $8,000 per year, and that of the assistant vice president at $6,000 per year. The work of the general counsel of the company may be compared to that of the corporation counsel of the District of Columbia, except that it is very much more limited in scope. True, the general counsel of the Washington Gas Light Company must pay his own overheads, but it is also true that the Washington Gas Light Company is only one of his clients. If we were to allow $9,000 as the public's share of his annual salary, that would be more than sufficient.

None of the above questions were even considered by the majority. I think that the salaries of general officers and executives for rate- making purposes should be reduced by $50,-966.50.

Taxes

The sliding-scale arrangement provides that in computing the net amount available for return, allowance should be made for "reasonable accruals for taxes." The word reasonable, as has already been indicated, refers to the taxes to be allowed for rate-making purposes. Any taxes which do not contribute to the service rendered to the public are not in any sense reasonable allowances for rate-making purposes.

Capital Stock Taxes

So far as the public is concerned, it is interested in receiving gas service. It is not concerned with the question whether that service is rendered by an individual, a partnership, or a corporation. Utilities are not ordinarily operated by individuals, because the amount of investment is generally too large to be borne by a single person. Where a group of persons undertake to do such business, there are various forms of business enterprise available to them, and the form usually adopted is the corporate form. There are distinct advantages which attend the doing of business in corporate form, and, if persons engaged in a utility enterprise desire to profit by these advantages, they, not the ratepayers, should pay those expenses which are incident to the conduct of business in corporate form.

The stockholders should bear the burden of capital stock taxes (totaling $48,155.11), because these are taxes imposed on the privilege of doing business in corporate form. They are unlike other excise taxes or property taxes which are incident to the business of the utility. Such taxes are allowable as deductions from operating revenue, because they are paid in order to preserve the business of the utility. Capital stock taxes, however, being imposed on the doing of business in corporate form inure to the benefit of the stockholders, not the consumers, and the stockholders should therefore bear the cost of such taxes.[31] Since the capital stock taxes are a charge on the privilege of doing busines in corporate form, they cannot be said to be "reasonable accruals of taxes" chargeable to the ratepayers.

[31] Re Long Island Lighting Co. (NY 1935) 18 PUR(NS) 65, 207.

Income Taxes

This brings us to the main question presented by the interveners, namely, the amount which should be allowed as a deduction from gross revenue for income taxes. It is my view that income taxes should not be allowed at all as deductions from gross revenue. These are direct taxes imposed on the corporation's net income, after deduction of all expenses. They are not taxes imposed in connection with the gas service, but after the service is rendered and the charges are paid. The entire theory of the income tax is that it must operate as a direct tax on the income and should not be passed on to others. To allow such taxes as a deduction from gross revenue actually means that the regulatory Commission exempts the utility corporation from the payment of an income tax and shifts the burden of that tax to the consumers. In the absence of a statutory provision to that effect, which would virtually exempt utility corporations from the payment of income taxes, I do not think that the Commission has the power or authority to grant such an exemption.

I realize that this is a minority view, and that the Supreme Court itself has held that income taxes are properly deductible from gross revenue. I therefore do not urge at this time that all of the company's income taxes should be disallowed as a deduction from operating revenue. I think, however, that this question should be brought to the Supreme Court for early reconsideration.

The allowance of income taxes as a deduction from gross revenue does not mean that all income taxes must be allowed. Among the items of income taxes paid by the Washington Gas Light Company during the past test year, is an excess profits tax of $63,663.79. The Commission's staff suspended this amount, but credited the income taxes with 31 per cent thereof, because, had the excess profits tax not been paid, the normal tax and surtax would have been increased by $19,735.77. The Commission has sustained this suspension, and rightly so, because, as a public utility, the Washington Gas Light Company is not entitled to any excess profits. To make the consumers pay a rate which would permit excessive profits, and then to require them to pay the excess profits tax, would be heaping injury upon an injury.

Assuming that income taxes, other than excess profits taxes, may properly be deducted from gross revenue, the question still remains whether it would be reasonable to allow a deduction for the entire amount of income taxes paid during the test year. We are passing through a state of emergency in which our nation, together with the other United Nations, is fighting for the existence of our civilization, not merely for the existence of our own institutions. We are engaged in a war which, more than any other war in the past, involves not only the military forces, but also all of our economic forces, and even relationships which are neither military nor economic. It has become established that not only our military machine, but also our entire economic life, must be geared to the exigencies of this war.

First in preparing for this gigantic struggle and then in the prosecution of the war itself, Congress imposed

heavier taxes than were ordinarily necessary to keep the wheels of government going. Various types of taxes were imposed; among them, significantly, increased income taxes, on the theory that each and every person must shoulder the burden and responsibility of the war.

For the years 1936 through 1939, the income taxes paid by the company amounted to 19 per cent of its net income. In the next year the tax burden rose to 31 per cent, and in 1942 to 40 per cent. Should these added taxes be passed on to the consumers? Should the consumers, who bear their own tax burden, also bear the burden imposed by Congress on the company to aid in the prosecution of the war? I think these additional taxes should under no circumstances be passed on to the consumers. We should not create a class of corporations exempt from the duty of contributing to the nation's fight for its existence.

Recently, the Federal Power Commission arrived at the same conclusion.[32] Commissioner Scott, speaking for the Commission, said:

"We take judicial notice of the fact that our country is waging a war for survival. It is common knowledge that there will be increased tax burdens resulting from the requirements inherent in a global conflict. Business as usual is out—in fact, a great many so-called 'small enterprises' have ceased to exist. Normal business during this period of grave emergency is at an end. Obviously, no one can expect to maintain a status or condition of business unaffected by the holocaust now sweeping the world. Increased tax burdens must be borne by the utility which enjoys a monopolistic position in the economic field, as well as by others who have no such advantage.

. . . . . .

"So that there may be no confusion concerning the tax situation in connection with the companies subject to our jurisdiction, where necessary to stabilize utility rates at reasonable levels during the war emergency period, we propose to allow as proper operating expenses only such taxes as may be termed ordinary or normal. For the purpose of distinguishing between ordinary or normal and war emergency or abnormal taxes, we conclude that the basis prescribed in the 1940 Revenue Act establishes the highest possible level of Federal taxes which may be allowed as an element of operating expense for such purpose. The 1941 Revenue Act and the pending 1942 proposal certainly reflect abnormal tax requirements for war purposes."

The Commission disallowed only $115,863.09 of the war taxes, on the theory that 31 per cent is "reasonable." This the Commission did, as it stated, "after weighing all factors to the best of our ability." What factors did the Commission weigh? Upon what facts? Upon what findings? Surely there was no call for such exertion on the Commission's part when the evidence in the record clearly showed that for the years 1936 through 1939, years of normal taxes, the rate was 19 per cent and that the taxes for the test year ended June 30, 1942, were over $300,000 in excess of what might be termed ordinary or normal taxes. I think that, in addition to the amount disallowed in the form of excess profits taxes ($43,928.02), and the amount

[32] Detroit v. Panhandle Eastern Pipe Line Co. (1942) 45 PUR(NS) 203, 219.

of income taxes disallowed by the Commission, income taxes should be disallowed in the sum of $143,706.30. To this should be added the sum of $439.05 paid by the company to Stone and Webster for expenses in connection with work on excess profits taxes.

There is an additional and transcending reason for the disallowance of the extraordinary and abnormal war taxes. They result in an increase in rates which contributes to the inflationary tendencies in our present economy and thwarts our war effort. Both Congress and the President embarked upon a policy to curb inflationary tendencies. On July 30, 1941, the President addressed a message to Congress requesting the enactment of legislation for the control of prices. Therein he stated:

"Inflationary price rises and increases in the cost of living are today threatening to undermine our defense effort."

Congress responded by enacting the Price Control Act, in which it gave wide powers to the Office of Price Administration. True, Congress specifically omitted jurisdiction over public utilities, but only because it was felt that the regulatory agencies having jurisdiction over the utilities would redouble their efforts to control prices charged by them and would accomplish the same result of curbing inflation.

On August 27, 1942, the President laid before Congress a 7-point national economic policy designed to stabilize the domestic economy of the United States for the duration of the war. The objective was to prevent any further rise in the cost of living. In his famous Labor Day message to Congress, the President reiterated his stand that inflationary tendencies must be curbed as a war measure. He said:

"War calls for sacrifice. War makes sacrifice a privilege. That sacrifice will have to be expressed in terms of a lack of many of the things to which we all have become accustomed. Workers, farmers, white collar people, and businessmen must expect that. No one can expect that, during the war, he will always be able to buy what he can buy today."

With reference to the function of taxation in economic stabilization, the President further said:

"One of the most powerful weapons in our fight to stabilize living costs is taxation. It is a powerful weapon because it reduces the competition for consumer's goods—especially scarce foods.

"The coöperation and self-restraint of the whole nation will be required to stabilize the cost of living. The stabilization of the cost of living cannot be maintained without heavy taxes on everyone except persons with very low incomes. With such increases in the tax load, unfair tax distribution becomes less and less tolerable. We can rightfully expect the fullest coöperation and self-restraint only if the tax burden is being fairly levied in accordance with ability to pay.

"This means that we must eliminate the tax exemption on interest on state and local securities, and other special privileges or loopholes in our tax law.

"It means that in the higher income brackets, the tax rate should be such as to give the practical equivalent of a top limit on an individual's net income after taxes, approximating $25,000. It means that we must recapture through taxation all wartime profits

that are not necessary to maintain efficient all-out war production. Such provisions will give assurance that the sacrifices required by war are being equitably shared."

Here the Commission, by exempting the company from a part of the war taxes grants an increase in rates, not because there is any showing that the existing rates are unreasonably low or confiscatory, but because apparently a formula adopted in 1935 is deemed more important than our national policy. The granting of the present increase flies in the face of the policy established by Congress and the President. It is a challenge to the Congress and the President, and, within the shadow of the Capitol and the White House, sets an example for other Commissions to follow.

The Commission did include a provision in its order whereby any portion of the amount derived from the increased rates, which, if retained by the company, would be subject to excess profits tax shall be refunded to the customers. This arrangement is said to be designed to guard against the possibility that the increase might result in inflation.[33] If the arrangement has any meaning, it is hardly a plan which is apt to have the effect of preventing inflation. I am rather inclined to the view that the plan adopted will tend in the opposite direction. The plan simply means that the company will charge increased rates and that, if the company has to pay excess profits taxes, then rather than pay such taxes the company will refund the amounts to the consumers. Yet, if the inflationary effect of increased prices is diminished through taxation, as was stated by the President in his message to Congress, then it may fairly be said that the plan or arrangement will have the effect of furthering inflation rather than preventing it.

The majority opinion seeks to minimize the inflationary effect of the increase allowed. The opinion makes an advertising appeal. The domestic customer will have to pay only 3 cents per month additional, the space-heating customer—only 57 cents per month additional; the average increase will be only 46 cents per month additional. How often have we read in the advertising columns: "Buy this set of books for only $100; it costs you only 1 cent per day"! The fact of the matter is that these few cents per month mean over $200,000 taken from consumers, and given to the company. Tall oaks from acorns grow. These tiny increases are the ones which cumulate into a destructive force.

Depreciation

I have thus grouped the items which should be disallowed as deductions from gross revenue within the terms of the sliding-scale arrangement itself. Unlike these, but like the question I raised as to the rate base, the deduction for depreciation or retirement expense should be adjusted in the light of actual facts and in the light

[33] The opinion states that the Commission requested the company to propose such a protective arrangement. The record shows that the arrangement was not proposed by the company but by the present chairman of the Commission. In fact, on cross-examination, the company's witness testified that he was not prepared to explain the consequences of this arrangement, because, though introduced by the company, it was an arrangement suggested by the chairman himself.

of the recent decision of the Supreme Court in Federal Power Commision v. Natural Gas Pipeline Co. (1942) 315 US 575, 86 L ed 1037, 42 PUR (NS) 129, 62 S Ct 736. The provisions in the sliding-scale arrangement as to retirement expense are rather complicated. Reduced to the simplest terms, it means that the retirement reserve shall consist of $1\frac{3}{4}$ per cent of the initial rate base plus $1\frac{3}{4}$ per cent of any additions to the rate base from year to year, and that 4 per cent of the cumulated retirement reserve shall be deducted as retirement expense.

There are two errors in this method of arriving at the retirement expense. First, it is computed on the basis of both depreciable and nondepreciable property. Whatever may be the proper rate of depreciation, it cannot be computed on that part of the rate base which does not depreciate. Therefore, in computing depreciation reserve, the percentage provided must be applied to the rate base diminished by the amount of nondepreciable property. The second error lies in the fact that, while the company is permitted a rate of return of $6\frac{1}{2}$ per cent on its undepreciated rate base, the amount deducted as depreciation expense is only 4 per cent of the depreciation reserve. This actually means that, in addition to the company being allowed a return of $6\frac{1}{2}$ per cent on the depreciated rate base, it is allowed an additional $2\frac{1}{2}$ per cent on property which is no longer in existence.

Such computations of retirement expense or depreciation had been pursued in the past on the theory that that also was required by the decisions of the Supreme Court. In the case of Federal Power Commission v. Natural Gas Pipeline Co. *supra,* the Supreme Court expressly held that in the computation of a fair return on property used and useful in the service, there is no room for the argument that the company must be allowed a premium on the depreciation reserve in addition to a fair return on the investment.

Applying the percentage of retirement to the depreciable property only, and applying the same percentage to the cumulated depreciation reserve as is applied to the rate of return, the amount of retirement expense, the record shows, is $120,732. In other words, the deductions from gross revenue should be further reduced by $227,338.01.

Conclusion [34]

In view of the foregoing, the company, during the past test year, earned at least $874,372.78 in excess of $6\frac{1}{2}$ per cent, and *under the sliding-scale arrangement, $617,874.36* should be applied to rate reductions. This computation, limited to the sliding-scale arrangement, imputes no recognition on my part that the company is entitled to retain any amount over and above 6 per cent. In other words, with the record in its present state, no injustice would be done, if the rates were reduced by $1,009,207.04.

[34] The computations of the figures in this conclusion were furnished by the chief accountant of the Commission, in accordance with this opinion.

Re Washington Gas Light Company

[Formal Case No. 316, Order No. 2404.]

Procedure, § 33 — Reopening of rate case — Participation by Price Administrator.

The record in a proceeding which had resulted in an order authorizing an increase in gas rates was reopened for the purpose of receiving from the Office of Price Administration on behalf of the Director of Economic Stabilization additional evidence relating to the inflationary effect, if any, of the increase in rates authorized by the order, and intervention was granted for such purpose, notwithstanding the fact that the record had been closed prior to the approval of the act of October 2, 1942, amending the Emergency Price Control Act of 1942, to provide for notice to and intervention by a government agency.

Rates, § 645 — Scope of proceeding — Participation by Price Administrator — War-time regulation.

Discussion, in dissenting opinion, of the limitation of the Director of Economic Stabilization to the development of evidence relating solely to the inflationary effect of a rate increase, in a proceeding reopened for the purpose of receiving additional evidence relating to such inflationary effect, if any, pursuant to the provisions of the Emergency Price Control Act of 1942, as amended by the Act of October 2, 1942, p. 47.

(HANKIN, Commissioner, dissents.)

[October 23, 1942. Petition for reconsideration denied November 16, 1942.]

PETITION *filed on behalf of Director of Economic Stabilization by Price Administrator of Office of Price Administration requesting reopening of rate proceeding; record ordered to be reopened. For original decision on rate increase, see ante, p. 1, and for order affirming rate order, see post, p. 50.*

By the COMMISSION: The Commission has given consideration to the petition filed on behalf of the Director of Economic Stabilization by the Price Administrator of the Office of Price Administration, wherein request is made for a reopening of the proceedings in this case "for the purpose of presenting evidence or argument concerning the comprehensive national economic policy developed in accordance with the provisions of the Emergency Price Control Act of 1942, as amended by the act of October 2, 1942, and the effect thereon of increases in rates and charges of common carriers or other public utilities," and more particularly the increase in rates authorized by Order No. 2401, 46 PUR(NS) p. 1, *ante*. The Commission has likewise reconsidered all the proceedings in this case, including the following facts:

On March 20, 1942, the Commis-

sion issued an order directing an engineering and accounting investigation to be made relative to the rates, tolls, charges, tariffs, rules and regulations, and conditions of service of the Washington Gas Light Company, including an investigation in conformity with the sliding-scale arrangement, which prescribes the "rate year" from September 1st to August 31st. Notice of intention to hold a formal public hearing upon the subject matter of the investigation was included in the order. A detailed investigation was made by the staff of the Commission, extending from April, 1942, to August, 1942.

Under date of July 21, 1942, the Commission gave formal notice of a public hearing to be held on August 18, 1942.

On August 14, 1942, a prehearing conference was held, which was attended by members of the Commission, its staff, the utility counsel of the Office of Price Administration (the same counsel now appearing on the petition filed herein), and counsel and staff of the gas company.

On August 18, 1942, formal public hearing was begun, at which hearing the Office of Price Administration, through its utility counsel, was permitted to intervene and to become a party to this proceeding with the consent of the Washington Gas Light Company.

During the course of the hearing on August 19th, counsel for the Office of Price Administration asked that the hearing be continued in order to permit him to prepare for cross-examination of the witnesses who had appeared, and to prepare testimony to be presented on behalf of the Office of Price Administration, which request was granted, and the hearing was continued for such purposes for a period of two weeks.

The proceeding was reconvened and further hearings took place on September 4th, 8th, 11th, and 14th, during which time the Office of Price Administration, through its counsel, cross-examined witnesses and presented testimony.

The record was closed on September 14th, and all interested parties, including counsel for the Office of Price Administration, were given until September 25th to file briefs. On that date the Office of Price Administration, through its counsel, filed a brief.

On September 25, 1942, the Commission granted petitions of the Fort Davis Citizens' Association and Washington League of Women Shoppers to intervene. Pursuant to the order granting leave to these petitioners to intervene, the proceeding was reopened, and was set for further formal public hearing on September 30th. Counsel for the Office of Price Administration participated in the reopened proceedings and filed a supplemental brief.

On October 13, 1942, the Commission rendered its findings and opinion and issued Order No. 2401, prescribing new rates which, under the sliding-scale arrangement, became effective for the "rate year" beginning September 1, 1942.

Notwithstanding the fact that the record in this case was closed prior to the approval of the act of October 2, 1942, the record and proceedings clearly indicate that the Commission followed in substance the provisions of that act. However, in view of the

petition filed on behalf of the Director of Economic Stablization, the Commission will reopen the record for the purpose of receiving additional evidence from the Office of Price Administration on behalf of the Director of Economic Stablization as hereinafter ordered.

It is *ordered:*

Section 1. That the record in this proceeding be, and the same hereby is, reopened for the purpose of receiving from the Office of Price Administration, on behalf of the Director of Economic Stabilization, additional evidence relating to the inflationary effect, if any, of the increase in rates authorized by Order No. 2401, and intervention is granted for such purpose.

Section 2. That the reopened proceedings be set for formal public hearing on Monday, November 2, 1942, at 10 A. M., in room 500, District building.

HANKIN, Commissioner, dissenting:[1] I cannot agree with Order No. 2404, purporting to grant the petition filed by the Price Administrator in behalf of the Director of Economic Stablization, because the order does not constitute sufficient compliance with the petition, nor with the act of October 2, 1942, "To Amend the Emergency Price Control Act." I believe (1) that Order No. 2401, authorizing an increase in rates, should be vacated, and (2) that the case should be reopened for the purpose of arriving at a correct rate structure without limiting the Director of Economic Stabilization to the development of evidence relating solely to the inflationary effect of the ordered increase.

1. The Price Administrator, in behalf of the Director of Economic Stabilization, petitioned that Order No. 2401, issued on October 13, 1942, be vacated. In his petition, the Price Administrator stated that the issuance of this order, without notice to the Director of Economic Stabilization and without giving him an opportunity to intervene in this proceeding, was invalid and constituted a denial to the Director of his right to appear in this proceeding.

In a letter accompanying this petition, the Price Administrator stated: "It is my judgment that the action of the Commission in issuing an order without prior notice by the company to the Director of Economic Stabilization . . . is violative both of the letter and the spirit of the act of October 2nd." He concluded with the request that the Commission "re-open the proceedings and rescind the order in this case." The Director of Economic Stablization joined in this request. For the reasons stated in my

[1] This is a belated dissent to Order No. 2404, issued on October 23, 1942. As I pointed out in my previous dissent in this case, the rule adopted by the Commission requires that the draft of the majority opinion and order be submittd to the minority member, affording him an opportunity to write his dissent; then the minority opinion draft must be served on the majority that they might have an opportunity to modify their opinion or order; then if the minority opinion is not modified, both opinions and the order are issued simultaneously. In this case, the majority opinion and order were not shown to me until about ten minutes before they were issued. There was, therefore, no opportunity to write a timely dissent to be issued together with the majority opinion, and the majority of the Commission had no opportunity to consider the views expressed herein. This may be unbelievable, but it is true

dissent from Order No. 2401, I think that the order was invalid, and should therefore be vacated.

In its present opinion (accompanying Order No. 2404), the Commission recites that counsel who filed the present petition is the same counsel for the Office of Price Administration who had participated in the hearings which culminated in the Order No. 2401, implying that there was anticipatory compliance with the statute. This implication is entirely erroneous. Counsel appeared then for the Office of Price Administration whose intervention was a privilege granted by the Commission. Now he and the Price Administrator are appearing in an entirely different capacity, namely, for the Director of Economic Stabilization under an Act of Congress. Even if the President, by Executive Order No. 7250 issued October 3, 1942, had designated the Price Administrator and his counsel as the agency to receive notice as provided in the act of October 2nd, there would not have been sufficient compliance with the statute.

The Commission also recites the fact that the record was closed prior to the approval of the act of October 2nd. This did not justify a decision contrary to the law. Even if the case had been decided prior to the passage of the act, it would have been the duty of the Commission to vacate its order and comply with the requirements of the new law. When a case has gone through the administrative proceedings and through the courts, including the Supreme Court of the United States, and, within the same term of court, a statute is enacted which renders the decision of the Supreme Court inconsistent with the statute, the proper procedure is to vacate the order, and to decide the case in accordance with the new legislative mandate. Orders looking in futuro, whether rendered by administrative agencies or courts, must be consistent with the law as of the time when the orders are in operation. Therefore, the conclusion reached by the majority, that it had followed in substance the provisions of the act of October 2nd, because the record was closed prior to the approval of the act, is entirely erroneous. On the contrary, in view of the facts attending this legislation, the record should not have been closed; and if it was closed, it should have been immediately reopened when Congress passed the act. The law does not contemplate that the validity of rates depend on whether the Commission or Congress acts with greater haste.

But let us assume that I am wrong in all I have written in my dissent from Order No. 2401 and in all I am saying here. Let us suppose that the Director of Economic Stabilization and the Price Administrator are wrong in maintaining that the order is invalid. Nevertheless, the respect and courtesy due to these high officers of the Federal government should have impelled some recognition to their petition that the order be vacated. The Commission might have, at least, set this question for argument. Instead, this request was neither granted nor denied, but *ignored*, as if unworthy of consideration.

2. The majority opinion enumerates a list of detailed steps in the intervention of counsel for the Office of Price Administration, giving the im-

pression that he had full opportunity to be heard. The record, however, is replete with evidence that the treatment accorded to him in effect nullified his intervention. In my dissenting opinion I reviewed the entire administrative procedure followed in this case and demonstrated that the public had been denied a full hearing.

The majority, in reopening the case for the purpose of receiving "additional evidence relating to the inflationary effect, if any, of the increase in rates" is now attempting to treat the Director of Economic Stabilization in the same manner as it treated counsel for the Price Administrator. The director may intervene, he may introduce evidence, but only to show that an inflationary effect is attributable to the particular $200,000 granted as an increase in rates; to the 3 cents per month which, the majority said, constituted the increase to the average domestic consumer; to the 1/37 of 1 per cent increase in the cost of living index; as to all of which the majority has already concluded: "We cannot conceive that such an increase would have material inflationary tendencies." Yet, if one is to balance economic factors in order to determine inflationary effects, is it not pertinent to consider whether the rates are not already inflated? If a rate is unreasonably low, an increase may be justified. It may not be inflationary, because it would merely bring this cost into proper balance with other costs. But if a rate is unreasonably high, it already contributes to the inflationary effect, which should be removed. Does it not, therefore, become the function of the director to see whether the rates should be lowered, rather than raised? Under the act of October 2nd, the Director of Economic Stablization is given a right to intervene, a right without limitation. For the Commission to say to him that he may intervene, but may not go into all elements of fact and law which he may deem necessary for the determination of the reasonableness of the rate, is to deny him his statutory right as effectively as if the petition were denied outright.

This is disputed by the majority. They say in effect that the act of October 2nd directs the *public utilities* to give notice to and to consent to intervention by the Director of Economic Stabilization; the act contains no directives addressed to the regulatory agency themselves; therefore, there is no violation of the act if the Commission grants an increase, or denies the Director's petition to intervene; and if it may deny him the right to intervene, it may certainly limit the scope of his intervention.

The fact that the statute does not direct the Commission to do or to refrain from doing anything, does not mean that the Commission may so act as to nullify the legislative objectives. The Internal Revenue laws direct the utilities to pay income taxes; these laws do not direct the Commission to do anything. Yet, is it conceivable that the Commission may require the utilities not to pay the taxes? Wherein would such an order be different from Order No. 2401, in which the Commission *required* the company to charge higher rates, after Congress directed the company not to increase its rates unless it first gave notice and consented to intervention as prescribed by the statute? I can see no difference. Could the Commission then

say: Let the company give notice, let it consent to intervention by the Director of Economic Stabilization, we shall render the act impotent by denying any petition to intervene or by so limiting the intervention as to render it useless? To ask the question is to answer it.

Emergency legislation cannot be drafted with the niceties required of criminal statutes. The mere fact that this statute contains no directives addressed to the Commission, in no way absolves it from its duty to follow the law, especially since our own organic act provides that it shall be the duty of this Commission to enforce not only the provisions of our Public Utility Law, but also "all other laws relating to public utilities."

The majority arrived at the conclusion that the company was entitled to a rate increase in the sum of $200,000. I arrived at the conclusion that, upon the record made, the company's rates should be decreased by $617,000. Most of my disallowances were based on the fact that the company had failed to sustain its burden of proof. It may well be that if the company were given an opportunity to prove by competent evidence that some or all of those items should be allowed, it would do so. In these circumstances, there is but one way, it seems to me, in which the Director of Economic Stabilization can effectively carry out the intent of Congress and the President, and that is by full participation in the development in the record of all elements of fact which enter into the determination of just and reasonable rates chargeable by the Washington Gas Light Company; by insisting on strict proof relating to the proper rate base, proper allowances for operating expenses, reasonable allowances for taxes and reasonable deductions for depreciation; by insisting that the Commission make specific findings of fact, rather than mere conclusions or inferences of fact;[2] and by insisting on the strict application of the fundamental rule of administrative decision, that the order be supported by the findings and that the findings be supported by the evidence.

[2] Saginaw Broadcasting Co. v. Federal Communications Commission (1938) 68 App DC 282, 96 F(2d) 554.

DISTRICT OF COLUMBIA PUBLIC UTILITIES COMMISSION

Re Washington Gas Light Company

[Formal Case No. 316, Order No. 2418.]

Rates, § 181.1 — Increases during war — Inflationary effect — Evidence as to taxes.

A petition of the Price Administrator of the Office of Price Administration, on behalf of the Director of Economic Stabilization, that an order authorizing increased rates under a sliding-scale arrangement be vacated, should be denied when, upon reopening of the record for the presentation of evi-

dence of inflationary effect, the only evidence submitted is as to Federal income taxes, which evidence fails to show that the tax allowance made by the Commission was overstated.

Procedure, § 42 — Stay or vacating of rate order.

Discussion, in dissenting opinion, of the vacating, or at least the stay, of a rate order upon application by the Price Administrator of the Office of Price Administration for reconsideration, p. 53.

Rates, § 640 — Procedure — Hearing — Scope — Evidence — Intervention.

Criticism, in dissenting opinion, of procedure of Commission in rate investigation, with a consideration of the question of postponement, scope of proceeding, exclusion of evidence, and intervention, p. 54.

Valuation, § 21 — Rate base.

Criticism, in dissenting opinion, of alleged errors committed by Commission with respect to rate base, p. 55.

Expenses, § 19 — Propriety of allowances.

Discussion, in dissenting opinion, of alleged errors in allowing deductions from operating revenues in a rate case, with a consideration of merchandising and jobbing, contributions, dues, salaries, taxes, and depreciation, p. 55.

Return, § 92 — Gas utility.

Discussion, in dissenting opinion, of allowances for return of a gas utility, p. 57.

Return, § 5 — Sliding-scale arrangement.

Discussion, in dissenting opinion, of sliding-scale arrangement for rate making in view of changed conditions, p. 57.

Rates, § 649 — Notice to government agency — Increases during war.

Discussion, in dissenting opinion, of the requirements of the Emergency Price Control Act of 1942, as amended by the act of October 2, 1942, relating to notice to a government agency before rates are increased, p. 58.

(HANKIN, Commissioner, dissents.)

[November 9, 1942. Petition for reconsideration denied November 16, 1942.]

PETITION *of Price Administrator of the Office of Price Administration, on behalf of Director of Economic Stabilization, that order authorizing rate increase under sliding-scale arrangement be vacated; denied. For original decision, see ante, p. 1, and for order reopening proceeding, see ante, p. 45.*

By the COMMISSION: On October 19, 1942, the Price Administrator of the Office of Price Administration filed with this Commission a petition, on behalf of the Director of Economic Stabilization, wherein request was made for a reopening of the proceedings in this case "for the purpose of presenting evidence or argument concerning the comprehensive national economic policy developed in accordance with the provisions of the Emergency Price Control Act of 1942, as amended by the act of October 2, 1942, and the effect thereon of increases in rates and charges of common carriers

or other public utilities." The petition also asked that Order No. 2401, 46 PUR(NS) p. 1, *ante,* be vacated and that the petitioner be permitted to intervene in the reopened proceedings.

By Order No. 2404, 46 PUR(NS) p. 45, *ante,* the Commission, on October 23, 1942, acting upon the said petition, reopened these proceedings for the purpose of receiving from the Office of Price Administration, on behalf of the Director of Economic Stabilization, additional evidence relating to the inflationary effect, if any, of the increase in rates authorized by Order No. 2401, and the petitioner was granted leave to intervene for such purpose. The reopened proceedings were set for formal public hearing on November 2, 1942.

No testimony was adduced by the Price Administrator at the reopened hearing on November 2nd, and at the conclusion of the hearing on that date, counsel for the Price Administrator moved that the case be continued until 10 o'clock A. M. on November 4th in order to permit him to consult with his associates as to future steps to be taken in the proceeding. Accordingly the hearing was continued until November 4th, at which time counsel for the Price Administrator presented evidence to show that the amount used by the Washington Gas Light Company for Federal income taxes in its determination of the amount available for increase in rates under the sliding-scale arrangement was overstated by approximately $18,000. This was due to the fact that the Revenue Act of 1942 as finally approved contained a provision exempting from surtaxes that portion of the company's income paid out as preferred stock dividends, which provision was not included in the draft of the bill upon which the original computation for income taxes was made. This was the only evidence offered.

In determining the amount available for rate increase under Order No. 2401, we used neither the computation of the company nor the Commission's witness, but substituted, as a reasonable allowance for Federal income taxes, an amount of $378,554.30, such amount being 31 per cent of the company's taxable income for the test year ended June 30, 1942. It can thus be seen that the evidence presented by counsel for the Price Administrator produces a figure for Federal income taxes approximately $130,000 in excess of the amount actually allowed in our determination under Order No. 2401. The evidence adduced fails to show that the rates authorized by Order No. 2401 are inflationary. Accordingly,

It is *ordered:*

That the petition of the Price Administrator of the Office of Price Administration, on behalf of the Director of Economic Stabilization, that Order No. 2401 be vacated, be, and the same is hereby, denied.

HANKIN, Commissioner, dissenting: On October 13, 1942, this Commission issued Order No. 2401, 46 PUR(NS) p. 1, *ante,* in which it ordered the Washington Gas Light Company to increase its rates, despite the provision in the act of October 2, 1942, which prescribed that no public utility may make any general increase in its rates which were in effect on September 15, 1942, unless it first gave thirty days' notice to the President, or

his agent, and consented to his timely intervention before the regulatory agency having jurisdiction to consider such increase.

The Price Administrator, acting in behalf of the Director of Economic Stabilization (the agency designated by the President to receive such notice) filed a petition with this Commission in which he prayed that the order of October 13, 1942, be vacated, and that he be permitted to intervene in this proceeding. On October 23, 1942, the Commission issued Order No. 2404, 46 PUR(NS) p. 45, *ante*, in which the record of the proceeding was reopened for the purpose of receiving from the Office of Price Administration, on behalf of the Director of Economic Stabilization, "additional evidence relating to the inflationary effect, if any, of the increase in rates authorized by Order No. 2401"; the request that the order be vacated was ignored, and the case was set for a formal public hearing on November 2, 1942.

On October 31, 1942, the Price Administrator, acting in behalf of the Director of Economic Stabilization, filed another petition asking that Order No. 2404 be amended. He asked that Order No. 2401 be vacated or at least stayed, and that the proceeding be reopened to afford the Director of Economic Stabilization an opportunity to intervene in this case without the limitations imposed in Order No. 2404 or the limitations imposed on the Price Administrator when he intervened in the original hearing.

1. The request of the Director, that if the order is not vacated, it should at least be stayed, it seems to me, should be granted as a matter of course. A denial of this request is contrary to the spirit of our statute. Paragraph 64 of our statute [1] provides that when an application for reconsideration is filed the filing of the application itself shall act as a stay of the Commission's order; and if the application is granted, the stay must continue until the final disposition of the case. Apparently it was the congressional intent that whenever the Commission hears a case, it should do so with an open mind, and that the peti-

[1] "Paragraph 64. That if at any time the Commission shall be in doubt of the elements of value to be by them considered in arriving at the true valuation under the provisions of this section, they are authorized and empowered to institute a proceeding in equity in the district court of the United States for the District of Columbia petitioning said court to instruct them as to the element or elements of value to be by them considered as aforesaid, and the particular utility under valuation at the time shall be made party defendant in said action.

"That any public utility or any other person or corporation affected by any final order or decision of the Commission may, within thirty days after the publication thereof, file with the Commission an application in writing requesting a reconsideration of the matters involved, and stating specifically the errors claimed as grounds for such reconsideration. No public utility, or other person or corporation, shall in any court urge or rely on any ground not so set forth in said application. The Commission within thirty days after the filing of such application, shall either grant or deny it. Failure by the Commission to act upon such application within such period shall be deemed a denial thereof. If such application be granted, the Commission, after giving notice therof to all interested parties, shall, either with or without hearing, rescind, modify, or affirm its order or decision. The filing of such an application shall act as a stay upon the execution of the order or decision of the Commission until the final action of the Commission upon the application: *Provided*, that upon written consent of the utility such order or decision shall not be stayed unless otherwise ordered by the Commission. No appeal shall lie from any order of the Commission unless an application for reconsideration shall have been first made and determined." (District of Columbia Code § 43-704, p. 1094.)

tioner have a fair opportunity to demonstrate the righteousness of his cause, without feeling that there is already an operative order staring him in the face. If the granting of an application for reconsideration by any person affected automatically stays the Commission's order, then a fortiori the granting of an original hearing to a petitioner of no lesser importance than the Director of Economic Stabilization, a statutory agent of the President of the United States, should not be beclouded by a previous order issued. While there is no express provision in the statute that the order be stayed pending this particular type of hearing it seems to me that the requirement of staying the order would flow by necessary implication from Par. 64 of our statute.

2. I think that the order should be vacated and the case reopened, because both Order No. 2401 and Order No. 2404 are erroneous, both as to the facts and the law of the case. I have set forth my reasons in the dissenting opinions filed with these orders. I repeat briefly the reasons stated therein in support of my view that the present petition should be granted, namely, that the Commission erred in the following particulars:

Errors As to Procedure

I. The Commission has so far departed from the usual course of proper administrative procedure, and has so acted contrary to the rules of proper procedure, that it deprived the interveners and the public of a full and fair hearing, contrary to due process in its primary sense, in that

1. The Commission refused to postpone the hearing set for August 18, 1942, and to afford reasonable time to prepare testimony, despite the fact that it became evident at the prehearing conference, held only four days prior thereto, that neither the company, nor the intervener, nor the Commission were prepared to develop the facts and the law of the case.

2. The Commission, acting without authority of law and contrary to law, granted the company's motion to strike, and sustained objections to, questions asked by one of the Commissioners concerning the correctness of the rate base and concerning other matters necessary for a correct determination of the facts of this case.

3. The Commission, while granting the Price Administrator the right to tervene in the proceedings, at the same time hampered the intervener in developing the facts and the law of the case.

(a) By constantly limiting him to a purported "scope of hearing," which scope was so ill-defined that it was not and could not have been followed even by the Commission itself.

(b) By permitting counsel for the company to dominate the proceeding and constantly to annoy and interfere with counsel for the intervener.

(c) By permitting officers of the company to sneer and jeer at the spokesmen for the various citizens associations, and even at one of the Commissioners who sought to develop the facts of the case.

(d) By exhibiting such bias and prejudice to any view other than that favored by the company as to question whether information furnished by the Commission's chief accountant to one of the Commissioners was furnished by him in his capacity as an accountant.

4. The Commission set up an inde-

terminate "scope of hearing" under the so-called sliding-scale arrangement, excluded evidence on the theory that it went beyond the purported scope, except when the Washington Gas Light Company assented to have such evidence admitted, thus, in effect, surrendering to the company the function and power to rule on admissibility of evidence.

5. The Commission excluded evidence, and afforded no opportunity to present evidence, relating to the correct rate base and to the proper amount of depreciation or retirement expense deductible from operating revenue, in the determination of just and reasonable rates chargeable by the Washington Gas Light Company.

6. The Commission, while purporting to grant a petition for intervention by the Price Administrator, acting in behalf of the Director of Economic Stabilization, has so limited the scope of his evidence as to render the intervention a nullity.

7. Orders Nos. 2401 and 2404 did not and do not represent the action of the Commission as a body corporate, but were and are in truth and in fact the action of the Commissioners acting individually since

(a) The Commission itself never considered the facts or the law of the case, prior to issuance of Orders Nos. 2401 and 2404, except the one question relating to the applicability of the Act of Congress of October 2, 1942, to amend the Price Control Act of 1942.

(b) No deliberations or conferences were had by the Commission to consider the facts and reasons set forth in the minority opinions relating to these orders.

(c) The Commission failed and refused to follow its own rule governing the issuance of orders and opinions in cases where there is a division within the Commission.

Errors As to the Rate Base

II. The Commission committed a number of prejudical errors with respect to the rate base of the Washington Gas Light Company, to wit:

1. The Commission erred in failing to make basic findings which would lead to the conclusion as to what constitutes the proper rate base for determining just and reasonable rates, as required by law.

2. The Commission erred in arbitrarily assuming that the proper rate base was $28,088,332.

3. The Commission erred in failing to hold that the rate base of $28,088,-332 was inflated by at least $1,055,-549.52.

4. The Commission erred in holding that the computation of the rate base under the sliding-scale arrangement governed the determination of just and reasonable rates in this case, irrespective of whether or not such rate base was factually and legally a proper rate base.

Errors As to Deductions from Operating Revenue

III. The Commission erred in a number of particulars with respect to the operating expenses deductible from operating revenues for the purpose of computing the net return, to wit:

1. In failing to make findings as to the basic facts which would show the amount of operating expenses properly allowable as deductions from operating revenue in the computation of just and reasonable rates.

2. In arbitrarily concluding that the operating expenses allowable as deductions totaled $7,301,988.67; and in arbitrarily concluding that all items aggregating this amount were in accordance with the Uniform System of Accounts prescribed by the Commission and constituted reasonable expenses.

3. In failing to hold that the Washington Gas Light Company had failed to prove that items aggregating $389,098.33, purporting to represent services on customers' premises, constituted operating expenses chargeable to Account No. 769 of the Uniform System of Accounts, rather than expenses connected with the company's merchandising and jobbing department, chargeable to Account No. 520 of the prescribed System of Accounts, and not deductible as operating expense.

4. In failing to hold that the said items aggregating $389,098.33, representing services on customers' premises, were, according to § 8 of Order No. 2098, issued August 26, 1941, chargeable to the individual customers, and not to the ratepayers generally, and that, therefore, these amounts in question were not deductible as operating expense.

5. In holding, in effect, that items aggregating $216,072.27 were properly chargeable to promotional expenses; and in failing to disallow these items on the ground that the company has failed to show

(a) That none of these items were chargeable to merchandising and jobbing;

(b) What part, if any, of these items constituted expenses for obtaining new business, as distinguished from keeping old customers.

6. In failing to find and to hold that a contribution in the sum of $1,668.30 made by the Washington Gas Light Company to the Institute of Gas Technology constituted a donation not chargeable to operating expenses.

7. In holding, in effect, that association dues and contributions, including those paid to propaganda organizations, were properly chargeable, in the sum of $975, as operating expense and deductible from gross revenue; and in failing to hold that these items are not chargeable to the ratepayers, because the company had made no showing that these payments were made for the purpose of, and that they resulted in, the improvement of gas service to the public.

8. In holding that the salaries paid by the Washington Gas Light Company to its officers and executives were reasonable for rate-making purposes as charges against the ratepayers; in failing to hold that the company had made no showing as to the reasonableness of the amounts paid; in failing to hold that the amounts chargeable against the ratepayers should not exceed the salaries paid to persons in the public service in positions requiring comparable amounts of work, effort, knowledge, and ability; and in failing to find and to hold that the salaries paid to officers and executives were at least $50,966.50 in excess of the reasonable amounts properly deductible from operating revenue for rate-making purposes.

9. In allowing capital stock taxes, totaling $48,155.11, as a deduction from operating revenue; and in failing to hold that capital stock taxes, being

imposed on the privilege of doing business in corporate form, are payments which inure solely to the benefit of the stockholders, are not chargeable to the ratepayers, and are, therefore, not deductible from operating revenue for rate-making purposes.

10. In finding, contrary to the evidence, that the income tax rate paid by the company in 1941, namely 31 per cent, constituted ordinary and normal income taxes deductible from gross revenue; in failing to find that 19 per cent constituted the ordinary and normal rate, and that anything in excess of such rate constituted extraordinary and abnormal taxes imposed on the company as its burden in the prosecution of the present war; in failing to hold that such taxes are not chargeable to the ratepayers, and that the disallowance of the deduction should be increased by the additional sum of $143,706.30.

11. In failing to hold that an item of $439.05, paid for expenses in connection with work done for the company on excess profits taxes, is not deductible from operating revenue.

12. In computing depreciation on the basis of the entire rate base, including nondepreciable property, and in computing depreciation expense as being 4 per cent of the depreciation reserve, while permitting a rate of return of 6½ per cent on the undepreciated rate base; in holding that the depreciation expense formula adopted in the sliding-scale arrangement governed the amount of the deduction allowable as depreciation expense; in failing to hold that the formula adopted in the sliding-scale arrangement was contrary to Par. 16[2] of the statute; and in failing to hold that the allowance for depreciation expense should be reduced by $227,338.01.

Errors As to Rate of Return

IV. The Commission failed to make any findings of basic facts which would lead to the conclusion that a return of 6½ per cent of the undepreciated rate base, less 4 per cent of the depreciation reserve, constituted a fair and reasonable return; and in failing to hold that, in the absence of evidence to the contrary, a return of 6 per cent is ample as a fair and reasonable return under the present economic conditions.

Errors As to Increase in Rates

V. The Commission erred in ordering an increase in rates totaling in excess of $200,000, without a finding to the effect that the existing rates are

[2] "Paragraph 16. That every public utility shall carry a proper and adequate depreciation account. The Commission shall ascertain and determine what are the proper and adequate rates of depreciation of the several classes of property of each public utility. These rates shall be such as will provide the amounts required over and above the expense of maintenance to keep such property in a state of efficiency corresponding to the progress of the industry. Each public utility shall conform its depreciation accounts to such rates so ascertained and determined by the Commission. The Commission may make changes in such rates of depreciation from time to time as it may find to be necessary. The Commission shall also prescribe rules, regulations, and forms of accounts regarding such depreciation which the public utility is required to carry into effect. The Commission shall provide for such depreciation in fixing the rates, tolls, and charges to be paid by the public. All moneys in this fund may be expended in keeping the property of such public utility in repair and good and serviceable condition for the use to which it is devoted, or invested, and, if invested, the income from the investments shall also be carried in the depreciation fund. This fund and the proceeds thereof shall be used for no other purpose than as provided in this paragraph, unless with the consent and by order of the Commission." (District of Columbia Code § 43-315, p. 1084.)

unreasonably low or confiscatory; in failing to find that the existing rates are unreasonably high or excessive and that the rates under the sliding-scale arrangement should be reduced in an amount totaling $617,874.36; in failing to hold that in view of changed conditions the sliding-scale arrangement should not be applied and that the rates should be reduced in an amount totaling $1,009,207.04.

Violation of Act of October 2, 1942

VI. In issuing its Order No. 2401, the Commission acted in disregard of and contrary to the act of October 2, 1942, to amend the Price Control Act of 1942, in that

1. It issued an order directing an increase in rates without having the company first give notice to the Director of Economic Stabilization and consent to his timely intervention.

2. It made the order retroactive to September 1, 1942.

3. It held in effect that the intervention previously granted to the Office of Price Administration constituted sufficient compliance with the act of Congress, whereas in truth and in fact the intervention was so beset with limitations that it was rendered a nullity.

4. In issuing Order No. 2404, it failed to vacate Order No. 2401.

5. It failed to reopen the case for the purpose of permitting the Director of Economic Stabilization to develop the facts and the law of the case; for the purpose of requiring the Washington Gas Light Company to prove its proper rate base, proper allowances for operating expenses, reasonable allowances for taxes and reasonable deductions for depreciation; for the purpose of making specific findings of basic facts (based upon competent evidence), as distinguished from mere inferences or conclusions of fact; and for the purpose of arriving at conclusions of fact and law, which would be supported by proper findings.

6. By permitting the Director of Economic Stabilization to intervene for the purpose of adducing "evidence relating to the inflationary effect, if any, of the increase in rates authorized by Order No. 2401," without permitting him to go into all the facts and law pertaining to the rate determination in this case, the Commission imposed on him a meaningless and impossible task, thus in effect denying him the right to intervene.

Because of the above errors, I believe that both Orders Nos. 2401 and 2404 are void. Order No. 2401 should be vacated, and Order No. 2404 should be amended in accordance with the request of the Director of Economic Stabilization.

3. This brings me to the request made that the Director of Economic Stabilization be permitted to intervene, without the limitations imposed. What is the requirement of the statute? The act of October 2, 1942, provides, in § 1 thereof:

"The President may, except as otherwise provided in this act, thereafter provide for making adjustments with respect to prices, . . . to the extent that he finds necessary to aid in the effective prosecution of the war or to correct gross inequities: *Provided*, that no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942,

unless it first gives thirty days' notice. . . ." Chapter 578, 2d Sessions, Public Law 729, 77th Congress, H. R. 7565.

In subsequent sections the act sets out the exceptions to this great grant of power to the President to adjust prices to the extent *he finds necessary* for the purposes stated. Query: Does the above *proviso* also operate as an exception? We have been referred to statements made on the floor of both houses of Congress to the effect that this proviso does operate as an exception to the power granted to the President. These statements by members of the Congress would have constituted pertinent evidence of the collective congressional intent, if the language of the statute were uncertain and ambiguous, but not when the language is so clear that it requires no resort to extraneous sources of interpretation.

Had Congress intended to make an exception to this grant of power in favor of common carriers and other public utilities, it would have undoubtedly used appropriate language to express such intent by including it among the other exceptions. The proviso is not an exception, and does not diminish the power granted to the President. It is an emphasis of an additional obligation. It is a direction that, while private persons may increase their prices subject to limitations which may be imposed by the President, the common carriers and other public utilities may not do so without giving the required notice and consent to intervention, but still subject to limitations imposed by the President.

Thus Congress has not disturbed the powers and functions of the regulatory utility agencies, except to the exent that (1) it provided for intervention by the President's agent, and (2) it made utility rates, like any other prices, subject to the paramount power of the President to make adjustments to aid in the effective prosecution of the war or to correct gross inequities. Is it conceivable that Congress, in making this extraordinary grant of power to the President, intended that if he or his agent did seek to intervene, the regulatory authority may nevertheless show him the door? I cannot believe it. If this were to happen, the President could undoubtedly invoke his power under the act of October 2nd, and make adjustments in rates which would correct such gross inequities.

Let us suppose, however, that the proviso did constitute an exception to the power granted to the President. Then the exception must be strictly construed. Can we then so construe it that by this exception Congress made the application of this Presidential power, granted in times of greatest stress, depend largely on the subordinate agencies of the Federal, state, or even municipal governments who could at will exclude or limit the intervention by the President or his agent? Whichever way one examines this statute, the conclusion is inescapable that the right of intervention is granted by the statute, not by the respective agencies, and the statute contains no words of limitation on this right to intervene. It gives the Director of Economic Stabilization, as the agent of the President, the right to intervene in any case in which a rate increase is sought. The pur-

pose of the intervention is to prevent any unjustifiable increase in rates. To this end he may show that an increase in rates would not be justifiable, that the existing rates are not unreasonably low or confiscatory, or that in view of present conditions the company will be able to continue functioning and rendering service without an increase in rates. In a rate proceeding this opens the way to the examination of all elements entering into the rate determination, and if in the course of this proceeding it becomes evident that the existing rates are unreasonably high, it becomes the duty of the regulatory authority to order a reduction in rates.

Has this Commission recognized the President's, or his agent's right so to intervene? It limited his intervention to prove—what? That the increase ordered, the $200,000 will have an *inflationary effect!* It is indeed puzzling what this means.

At the hearing on the petition to amend Order No. 2404, the present chairman disclosed what he meant by inflationary effect, by reading into the record the definition of the term "inflationary." It means giving rise to "disproportionate and relatively sharp and sudden increase in the quantity of money or credit, or both, relative to the amount of exchange business." In other words, the chairman added, "when your dollar purchases less than it formerly did it is inflationary." Substituting this meaning for the words used in § 1 of Order No. 2404, the Director of Economic Stabilization was permitted to intervene for the purpose of showing that upon the increase of gas rates by $200,000, the purchase value of the dollar will drop. It may well be assumed that such result will not follow from the increase ordered, not even if the Commission had ordered an increase many times as large.

If this were the meaning of the act of October 2nd, that the director may be permitted to intervene for such purpose, then Congress would be legislating something which is absurd. No public utility desiring to remain in business will so increase its rates that the amount of the increase will lower the value of the dollar. No regulatory agency, no matter how deluded, will order such an increase. I cannot attribute to Congress such absurd result.

The most that can be expected from *any* increase in utility rates is an imperceptible inflationary *tendency*, rather than an inflationary *effect*. The Commission itself has used the words "inflationary effect" in this sense, when, in disallowing excess profits taxes in the sum of $43,928.02, it did so "in order to prevent the *direct inflationary effect* which such allowance would invite." Surely the Commission did not mean that if the $44,000 were allowed as a deduction from operating revenue, the purchasing value of the dollar would drop. Surely the Commission did not mean that $44,000 would have a *direct inflationary effect*, while $200,000 could not conceivably "have material inflationary tendencies," as the Commission said.

But then the question arises: Why will $44,000 in taxes (least inflationary in character) have an inflationary tendency, while $200,000 in profits (most inflationary in character) will not? Upon what facts has the Commission concluded that the $44,000

would have an inflationary tendency? I find none in the record. It must then be that the Commission arrived at this conclusion as a matter of common knowledge. And rightly so, for while no inflationary tendency can be perceived from any given increase in prices, any increase in times like the present has a *tendency* to increase other prices, until there is a cumulative *effect* which when perceived has already done its destructive work. If the Commission can take judicial notice of the inflationary tendency of an increase in rates in the sum of $44,000, why can it not take judicial notice of the same result in an increase five times as great? The Commission cannot escape this dilemma by dividing the increase among all consumers and calling it an increase of 3 cents per month. If this increase in rates means the much publicized 3 cents per month per domestic consumer, then the $44,000 means 3/5 of 1 cent per domestic consumer; if the $200,000 means an increase of 1/37 of 1 per cent in the cost of living index, then the $44,000 means in increase of 1/200 of 1 per cent in the cost of living index.

Let us suppose, however, that there is some justification for the difference, i.e., for taking judicial notice of the inflationary tendencies of the $44,000 and for requiring proof as to the $200,000. Upon what evidence, upon what theory of proof, could such tendencies be attributed to the $200,000 increase allowed by Order No. 2401? I asked counsel for the company, counsel for the Commission, and counsel for the Director of Economic Stabilization to outline the method of proof they would follow in order to show the inflationary tendencies or inflationary effects which this increase in rates would entail. None of them could give an answer. It was evident, upon the mere raising of the question, that the Commission assigned an impossible and meaningless task to the Director of Economic Stabilization. As a matter of fact, it was not and is not the intention of the Commission to allow the Director of Economic Stabilization to intervene.

This also brings up the question whether the company has actually complied with the provision of the act of October 2nd, that it consent to the intervention. The evidence shows that, immediately upon the issuance of Order No. 2401, the company addressed a letter to the Director of Economic Stabilization notifying him of the increase in rates. This letter contained no expression of consent to his intervention in this proceeding. On October 17th, the company addressed another letter to the Director of Economic Stabilization in which it attempted to show that it had already assented to intervention by the Office of Price Administration in the original hearing, implying that the company did not need to comply with the act of October 2nd. It was only after the Commission had issued Order No. 2404, limiting the Director of Economic Stabilization to an impossible and meaningless task, that the company, on October 30th, wrote a third letter, this time to the Commission, to the effect that it consented to intervention by the Director of Economic Stabilization. Asked whether this letter meant that the company consented to an unlimited intervention by the Director of Economic Sta-

bilization, or whether it meant that the consent was only to such intervention as was outlined in Order No. 2404, counsel for the company found great difficulty in giving an unequivocal answer. Finally the answer came that the company's consent was for an intervention "without strings attached." It was evident to me, however, that the consent was a mere empty gesture, for the company already knew that the Commission was not inclined to permit any intervention to the Director of Economic Stabilization which would develop all elements entering into rate making in the present proceeding.

As I said in my dissent on Order No. 2404, in discussing the Commission's duty under the act of October 2, 1942: "Could the Commission then say: Let the company give notice, let it consent to intervention by the Director of Economic Stabilization, we shall render the act impotent by denying any petition to intervene or by so limiting the intervention as to render it useless? To ask the question is to answer it." This is just what happened in this case. The company's consent and the intervention allowed had only form, but no substance.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Anthracite Telephone Company et al.

[Application Docket No. 60993.]

Corporations, § 9 — Dissolution — Necessity of Commission consent.

1. Commission approval is not required for the dissolution of a former telephone company all of whose property, franchises, and rights have been sold at a receiver's public sale under a court order, p. 63.

Consolidation, merger, and sale, § 11 — Commission jurisdiction — Acquisition of former utility company property.

2. Commission approval is not required for the sale of a former telephone company's property to an existing telephone company where all the former company's property, franchises, and rights have been sold at a receiver's public sale under a court order, but the acquisition of rights, powers, franchises, and privileges (but not the physical property) of the former company by the existing company is required, p. 63.

Consolidation, merger, and sale, § 18 — Grounds for approval — Termination of fictional company.

3. Approval of the acquisition by an existing telephone company of a former company's rights, powers, franchises, and privileges was granted where the transaction had actually taken place earlier at a receiver's public sale under court order, and the present application had been filed to correct the oversight in not having obtained the required Commission approval so that the fictional existence of the former company could be terminated and

the present company might extend its rates to the former company's subscribers, p. 64.

[September 28, 1942.]

APPLICATION *for approval of transfer of telephone property; approval of transfer of rights, powers, franchises, and privileges granted.*

By the COMMISSION: This is an application for approval of the transfer to The Northeastern Pennsylvania Telephone Company, hereinafter sometimes called Northeastern, of all the property, franchises, and rights of Anthracite Telephone Company, hereinafter sometimes called Anthracite. For reasons hereinafter stated, we shall treat the application as simply for approval of the acquisition by Northeastern of the rights, powers, franchises, and privileges, but not the physical property, formerly possessed by Anthracite. No protests have been filed.

Northeastern, which was incorporated on August 6, 1900, furnishes telephone service to the public in Forest City and vicinity, Susquehanna county, and in small parts of Lackawanna and Wayne counties.

[1, 2] Anthracite was incorporated in the year 1902 for the purpose of furnishing telephone service to the public in the same general territory as that served by Northeastern. It went into receivership in the year 1914, and on October 3, 1916, all its property, franchises, and rights were sold at a receiver's public sale, for a consideration of $6,215, to a trustee, nominee, or agent of Northeastern. The sale was confirmed by the court of common pleas of Lackawanna county, on March 7, 1917.

Immediately upon the sale of all its property, franchises, and rights, Anthracite's corporate existence came to an end by operation of law, and approval of the dissolution of Anthracite by our predecessor, the Public Service Commission, therefore, was not required by law. Nor was the approval of the Public Service Commission required to the sale of all Anthracite's property, franchises, and rights to Northeastern. Gillis v. Public Service Commission (1932) 105 Pa Super Ct 389, 161 Atl 563; New York & P. R. Co. v. Public Service Commission (1919) 72 Pa Super Ct 523. But approval of the *acquisition* by Northeastern of the rights, powers, franchises, and privileges (but not the physical property) of Anthracite was required by Art. III, § 3 (a), of the Public Service Company Law, which read as follows:

"Section 3. Upon like approval of the Commission first had and obtained, as aforesaid, and upon compliance with existing laws, and not otherwise, it shall be lawful—

"(a) For any public service company to renew its charter, or obtain any additional rights, powers, franchises, or privileges, by any amendment or supplement to its charter, or otherwise."

Substantially identical requirements are effective under § 202 (b) of the Public Utility Law.

[3] The application now before us has been filed to correct the oversight in not obtaining the required approval from the Public Service Commission.

Notwithstanding that Anthracite's corporate existence ended upon the sale of all its property, franchises, and rights, Anthracite's tariff, which differs slightly from Northeastern, has been allowed to remain in effect, and certain former Anthracite business subscribers have been billed by Northeastern at Anthracite's rate, which is higher than Northeastern's; two sets of books have been kept, after a fashion; and separate annual reports have been filed with the Public Service Commission and with us. On the other hand the two properties have been completely integrated, and are operated as one; for example, plant renewals, replacements, and retirements, and other plant changes, have been made as if the properties constituted one system.

If we approve the acquisition by Northeastern of all the rights, powers, franchises, and privileges of Anthracite, then the fictional existenec of Anthracite will be terminated, and Northeastern will extend its rates to the former Anthracite subscribers, resulting in a reduction of 25 cents a month to Anthracite business subscribers. The other Northeastern and Anthracite rates are identical.

The only consideration payable by Northeastern for the rights, powers, franchises, and privileges of Anthracite is the assumption by Northeastern of so-called Anthracite liabilities in the amount of $114.32, as of November 29, 1941.

The matters and things involved in the application before us having been duly presented and heard, and full consideration having been given thereto, we find and determine that approval of the acquisition by The Northeastern Pennsylvania Telephone Company of all the rights, powers, franchises, and privileges of Anthracite Telephone Company, is necessary or proper for the service, accommodation, convenience, or safety of the public; therefore,

Now, to wit, September 28, 1942, it is *ordered:* That the acquisition by The Northeastern Pennsylvania Telephone Company of all the rights, powers, franchises, and privileges of Anthracite Telephone Company, be and is hereby approved, and that a certificate of public convenience issue in evidence of approval; subject to the following condition:

That the approval hereby given is not to be understood as committing the Commission, in any proceedings that may be brought before it for any purpose, to fix a valuation on the property, rights, powers, franchises, and privileges of Anthracite Telephone Company equal to the consideration paid therefor or equal to any valuation that may be placed thereon by The Northeastern Pennsylvania Telephone Company, or to approve or prescribe rates sufficient to earn a return thereon.

The Chairman being absent did not participate in the vote on this order.

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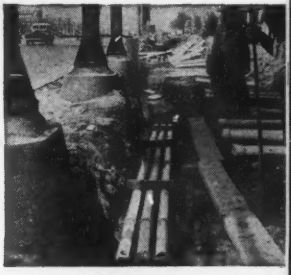

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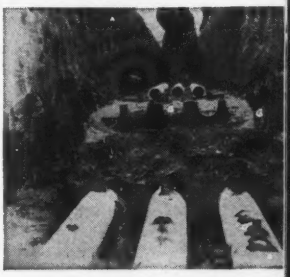

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Industrial Progress

Selected information about products, supplies and services offered by manufacturers. Also announcements of new literature and changes in personnel.

Equipment Notes

Wire Cutter With Remote Control

Longrange—the wire cutter with remote control—is offered by American LaFrance-Foamite Corp., for use in cutting hot elec-

trical wires at a safe distance from the danger zone. Longrange is of entirely different design than the short, conventional double-handled wire cutter which requires the close proximity of the operator and consequent danger from falling wires after they have been cut.

The Longrange cutter will handle either energized or cold lines. Slotted jaw holds wire by gravity until cut is made. It will take heavily insulated wire and will cut up to 4.0 hard drawn copper cable.

The handle, which is comprised of selected Douglas Fir or spruce, is insulation-tested for 75,000 volts per foot. Cutting action is controlled by operating rope of insulation-tested spot cord. If jaw is burned due to cutting live conductor, the blade may be replaced within 30 seconds.

Circuit-Testing By-Pass for Street-light Cutouts

A circuit-testing device for Novalux loop-sectionalizing cutouts equipped with a Thyrite by-pass has been announced by the Lighting Division of the General Electric Company. The testing by-pass is equipped with an SL-type film cutout, which provides a quick and inexpensive means of testing circuits.

This device enables the service man to determine whether the circuit is actually closed before installing a new Thyrite by-pass. If an open circuit causes the cutout to trip out, the circuit is repaired and the testing by-pass is inserted before the Thyrite by-pass is put into place.

The circuit-testing by-pass is not intended as a substitute for the Thyrite by-pass. Unlike the Thyrite device, the film cutout is unable to differentiate between a surge voltage such as that caused by lightning and a sustained overvoltage caused by an open circuit.

Heavy Duty Precision Machine

A new heavy duty precision cleaning machine is announced by L & R Manufacturing Company, Newark, N. J.

The machine is designed especially for the cleaning of instruments, meters, gauges, bearings, motor assemblies, gears, extruded elements and an infinite variety of related parts.

The new heavy duty model is a portable unit weighing less than 50 pounds. The work basket when loaded weighs only a few pounds, making speedy production possible without taxing the endurance of the operator. The principle of operation eliminates costly damage to parts.

Equipment Notes (Cont'd)

Two Pen Flow Recorders

Where panel space is at a premium, or where it is desired to have two related flow records on the same chart for ready comparison, the new 2-pen Cochrane electric flow meter (actually two complete Cochrane flow meter receivers mounted within one double depth case) achieves the result without complication and with no loss of accessibility according to a recent announcement.

Both receiver mechanisms can be swung out and operate in the swung-out position. The connection between the rear receiving mechanism and its pen arm must necessarily be detachable and is arranged with a self-aligning V-notch junction.

"Flud-Lite" Magnifier

An inspection tool that combines magnification and shadow-free fluorescent lighting,

known as "Flud-Lite" magnifier, is offered by Stanley Electric Tool Division, New Britain, Conn.

Two models are available: No. 701, made with steel base and friction joint arms, for bench work, use on conveyor belts or on machines; and No. 701H, equipped with hardwood handle for portable inspection anywhere in a plant.

Catalogs and Bulletins

Speed Prime Pumps

Facts about Rex speed prime pumps are given in an illustrated booklet published by the Chain Belt Company of Milwaukee.

Special mention is made of the "Rex Jr." the 3M light-weight pump for heavy duty service. This pump weighs only 57 lbs. and can be easily moved around for various jobs such as pumping out man-holes, dewatering excavations, etc.

Larger capacity pumps offered by this manufacturer also are described in detail and the bulletin (No. 400), in addition to giving specifications and data on how to figure the right pump for the job, illustrates the wide application of Rex pumps.

Catalogs and Bulletins (Cont'd)

Centrifugal Pumps

The Jennings Centrifugal pumps, single and double suction type, manufactured by the Nash Engineering Company, South Norwalk, Conn., are described in bulletin 322.

Nash centrifugals according to the bulletin, are offered in a wide range of head and capacity. At 1750 r.p.m. heads are available up to 120 feet in single stage pumps with capacities up to 200 g.p.m. in single suction construction and from 210 to 1900 g.p.m. in double suction pumps. At 3500 r.p.m. single stage pumps give heads to 300 feet, with capacities up to 200 gallons per minute in single suction design, and up to 600 gallons per minute in double suction pumps.

The Nash glass centrifugal pump, a centrifugal made of heat resistant glass is covered in a separate bulletin, No. 313.

Manufacturers' Notes

J-M Workers Sign Pledge

War workers in the Johns-Manville plant at Waukegan, Ill., who had signed a pledge to "stay on the job" and "increase production" had a conspicuous role in a colorful ceremony staged in offices of the Maritime Commission recently.

A bulky document with 1,969 signatures, addressed to the President of the United States, the pledge was delivered to Admiral Emory S. Land and Vice Admiral Howard L. Vickery by a delegation from Waukegan representing the Labor-Management Committee of the Johns-Manville plant which is occupied almost exclusively with war production.

The Army-Navy "E" award was presented recently to employees of the Kansas Ordnance Plant, built and operated by J-M Service Corporation, a Johns-Manville subsidiary. Lewis H. Brown, president of Johns-Manville spoke at the ceremonies.

Chamber of Commerce Promotes Howard

Thomas W. Howard has been promoted from assistant manager to manager of the department of manufacture, Chamber of Commerce of the United States of America, Washington.

Mr. Howard is a graduate of the Worcester Polytechnic Institute. As controller of the National Electrical Manufacturers Association, he promoted the use of uniform accounting procedures by its members and organized the extensive statistical activities of the association.

Public Utilities Help Fat Salvage Drive

Public utilities have added to their war efforts a big push for the drive to salvage waste cooking fats. Housewives instinctively look to their local gas and electric companies for cooking guidance, so there is a natural tie-up between utility displays and home service ac-

UTOCAR *"All-Out"* ON PRODUCTION FOR WAR

ing new standards of mobility for fire-ver, Autocar is "all-out" on production Half-Tracks and Tractor-Trucks for the ny, the Navy, and the Air Corps. Re-nber this as you haul your share on the e front. Pledge all your trucks to the S. Truck Conservation Corps, for their belongs to the Nation.

ut keep your eyes open for the Autocar *Trucks* of 194X. The size, precision, and stamina of the specialized Autocars for war are a guarantee of even greater capacity, closer precision, and tougher fibre in Autocars to come.

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Manufacturers' Notes (Cont'd)

tivities and the natural effort which is being made to conserve waste fats for use in explosives and many other necessary war products.

All of the promotional devices which have previously been used to sell gas, current, cooking equipment, refrigerators and other merchandise—and which now are being converted steadily to furthering the war effort—lend themselves to Waste Fat Savings. Many companies are mentioning fat salvage in their newspaper advertising and in envelope stuffers mailed out with monthly bills. Window display is another effective medium. A four-color poster showing how waste cooking fats are needed in firing field guns can be obtained without charge from the Waste Fat Saving Committee of the Glycerine and Allied Industries, 11 West 42nd Street, New York. The Committee can also supply mats for envelope stuffers, copy ideas for newspaper publicity and advertising and factual material for the home service department.

Arc Welding Savings

The James F. Lincoln Arc Welding Foundation's $200,000 Progress Award Program showed a possible annual cost saving of $1,825,000,000 including 7,000,000 tons of steel valued at $271,000,000 and 153,000,000 man hours of labor available by utilization of arc welding, according to a recent announcement by the Foundation.

Papers were submitted from 46 of the 48 states, by engineers, designers, architects, maintenance men and executives throughout the industrial field.

Altogether, 408 awards were made to 458 recipients, the difference covering joint authorship. Awards embraced 46 divisions of participation, which encompassed the entire industrial field.

The great mass of important new welding data contained in the papers will be made available as soon as possible for the benefit of war industries.

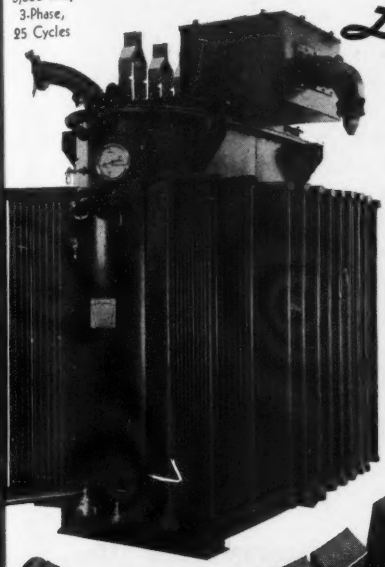
Westinghouse Appointments

Chester D. Moore has recently been appointed industrial relations manager of the Sharon transformer division of the Westinghouse Elec. & Mfg. Co., according to H. V. Putman, vice president in charge of the transformer division.

Mr. Moore was previously supervisor of industrial relations at the Merchant Marine Works of Westinghouse's South Philadelphia plant. Mr. Moore replaces J. T. Burke, who has been transferred to the Canton division of Westinghouse.

David S. Youngholm, vice president, announced the appointment of Dr. A. M. Hageman as general engineering manager of the Lamp Division, Bloomfield, N. J.

In his new position, Dr. Hageman will supervise all development and engineering activities involved in the production of lamps and electronic devices. He formerly was in charge of lamp engineering.



Pennsylvania ASKAREL non-inflammable TRANSFORMERS

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CIRCULAR COILS ...make the big difference

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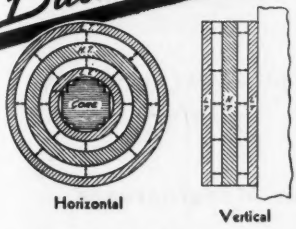

The circular coil is practically balanced, radially and axially, against short circuit stresses.

When a transformer is subjected to heavy overload or short circuit, the circular coil maintains its shape even without the use of compound or varnish. By eliminating such stresses, the coil is not strained, and the insulation is not injured.

In regular oil cooled transformers, varnish is used to increase the mechanical and electrical strength of the transformer coils, irrespective of the shape of the coils. This kind of varnish, however, cannot be used to treat coils in a transformer where non-inflammable liquids are employed. Therefore, without the aid of this varnish, it is imperative that the coils in a non-inflammable transformer have *great inherent strength.*

CIRCULAR COILS POSSESS THE MAXIMUM INHERENT MECHANICAL AND ELECTRICAL STRENGTH.

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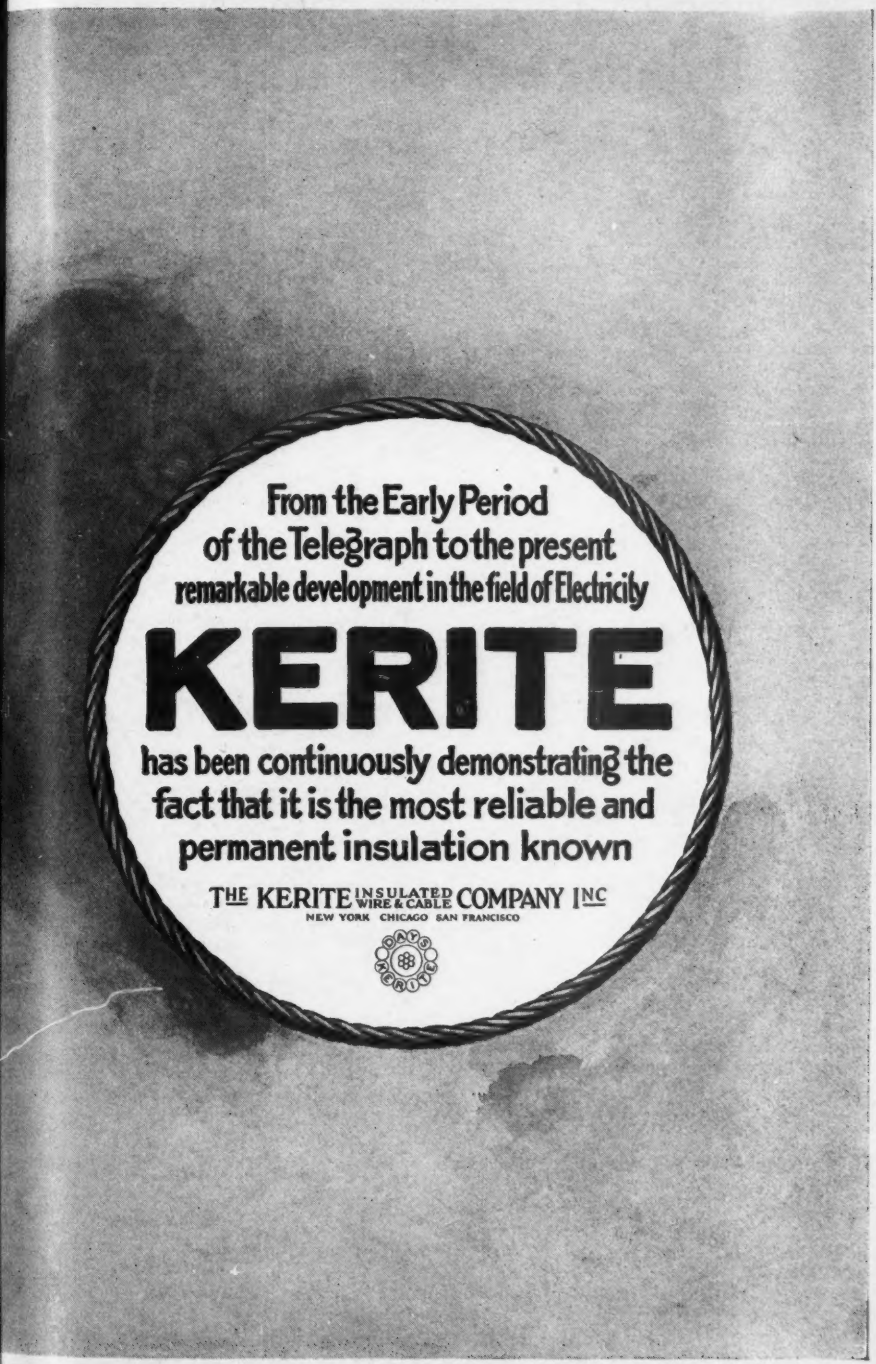

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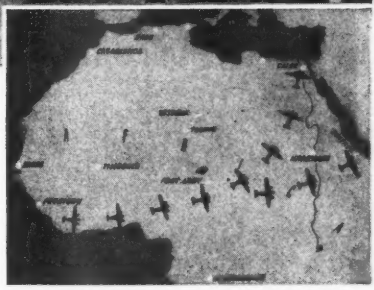

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International Diesel Power serves Pan American across Africa

NTY AND ON TIME!" With breath-taking Pan American Airways built the now-famous Atlantic and African aerial life line for the Transport Command. Aboard the Clippers ng out from U. S. terminals are ever-mount- ads of war-vital men and materials for the g fronts overseas.

forging of this chain of aerial bases to com- the routes across nearly 18,000 miles of land a will stand forever as an inspiring chapter iation history. *Here is a route destined to ob with the Axis!*

vester is proud of the part played by Inter- al Diesel Power Units on this route. On another life line in the war. International er Tractors, Power Units, and Motor Trucks the way to battle. Like all Harvester products, they are *dedicated to Victory.*

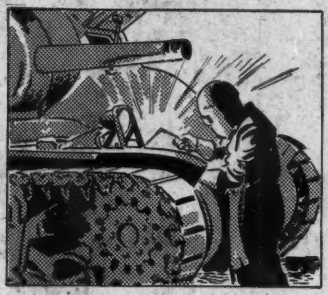
Says an Executive of Pan American: "One might call the International Power Units the 'hearts' of our stations in Africa. We depend on the power from these plants for the lighting of buildings, shops and airports; the operation of pumps for the water supply systems; refrigeration of meats and other food supplies; electric ranges for cooking; ventilating fans; air conditioning units; laundry machinery; shop tools and equipment; the heating of water, and other miscellaneous uses."

INTERNATIONAL HARVESTER COMPANY
180 North Michigan Avenue Chicago, Illinois

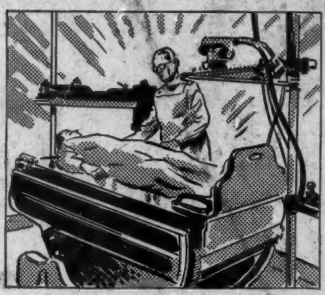
INTERNATIONAL HARVESTER

On Every Front

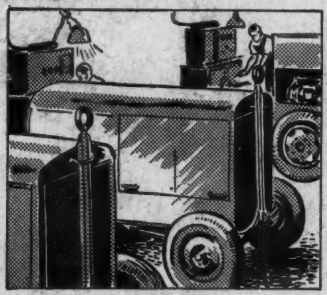
. . . General Electric equipment is fighting with America's land army. From the rolling kitchen to the front line, electricity works for victory.



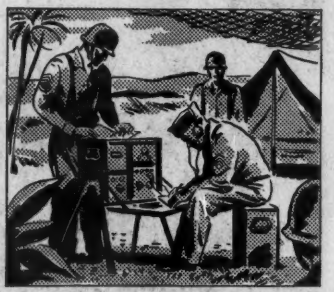
1. In the factory electricity stitches the seams of tank armor, and on the battlefield it controls the operation of these spearheads of modern combat.



2. In induction center and field hospital, the X ray helps safeguard the health of our fighting men, aiding in the diagnosis and treatment of disease.



3. Far from the usual power sources, mobile power plants supply electricity for 800,000,000 candlepower searchlights by which a newspaper can be read 12 miles away.



4. Blitz war requires swift communications! On the soldier's back, in field and sky, radio co-ordinates the striking force of American army planes, guns, and tanks.

General Electric believes that its first duty as a good citizen is to be a good soldier.

General Electric Company, Schenectady, N. Y. 959-21-211

GENERAL ELECTRIC